United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-1409

B
P/S

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

JACK LEVINE,
Defendant-Appellant.

JOINT APPENDIX

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OCT 18 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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x 0208 1

18:371	Consp. to evade income tax.	1
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DATES & INTERVALS

ARREST | INDICTMENT X | ARRAIGNMENT | SENTENCE

5-24-76 | disposition 5-24-76

ATTORNEYS

John N. Bush
791-1951

George Berger
Berger & Katz 103 Park Ave. N.Y.C. 10017
tele: (212) 532-6430

DATE	PROCEEDINGS
5-24-76	Filed indictment.
5-27-76	Deft. (Atty. present) enters a not guilty plea. 10 days for motions. Deft. ordered F/P. Bail limits extended in buisiness travel and to notify agencies. Deft. to surrender passport and R.O.R. Case assigned to Bonsal,J..Brieant,J.
06-02-76	Filed notice of appearance of atty. George Berger.
06-24-76	Filed deft's notice of motion re: continuance of the 2. trial from 7-13-76, etc. ret: 6-28-76.
06-29-76	Filed memo-end. on motion docketed 6-24-76. Motion denied after oral argument. Bonsal,J. mm
07-08-76	Filed deft's notice of motion re: bp,etc.
07-12-76	Filed memo-end. on motion docketed 7-8-76. Motion disposed of in accordance with Court's instructions at oral argument. Bonsal,J. m/n
7-27-76	~~Filed receipt of record of proceedings, dated~~ 7-27-76.

6-24-F1

BEST COPY AVAILABLE

07-13-76	Jury empanelled. Trial begun before Judge Bonsal.
07-14-76	Trial cont'd.
07-15-76	Trial cont'd. Deft. moves to dismiss and for judgment of acquittal. Granted ct. 1. Denied cts 2 & 3.
07-16-76	Trial cont'd.
07-17-76	Trial cont'd. and concluded. Deft. guilty cts. 2 & 3. Pre-sentence report ordered 9- 7-76 set for sent. Deft. R.O.R. Bonsal,J.
08-20-76	Filed Transcript of Record of Proceedings dated 07-13-76 thru 07-17-76. # 76,818
09-07-76	Filed Judgment (atty. Kenneth Katz and John Bogge) Ct. 2- 3 mons. impr. ct. 3- L.S.S. 2 yrs. prob. w/super. & FINED $3,000. on ea. of cts. 2 & 3. TOTAL FINE $6,000. non-committed. Fine to be paid within 6 mos. Advised of right to appeal. Deft. released on own recognizance pending appeal. Bonsal,J. issued all copies.
09-07-76	Filed deft's notice of appeal from judgment of 9-7-76. Mailed copies.

9-13-76 Filed Gov't requests to charge

A TRUE COPY CERTIFIED FROM THE RECORD
JAMES E. THOMPSON, Clerk
By G. E. Thompson
Deputy Clerk

BEST COPY AVAILABLE

B

JNB:mb
M-1630

JA 3
76 CRIM. 0493

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA :

- v - : INDICTMENT

JACK LEVINE, : 76 Cr.

Defendant. :

- - - - - - - - - - - - - - - - - - - -x

FILED
MAY 21 1976
S. D. OF N. Y.

COUNT ONE

The Grand Jury charges:

1. From in or about December, 1969 and continuously thereafter up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, JACK LEVINE, the defendant, and Martin Frank and David Kolatch named herein as co-conspirators but not as defendants, and others to the Grand Jury both known and unknown, unlawfully, willfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 7201 and 7206(.) of Title 26, United States Code.

2. It was a part of said conspiracy that the co-conspirators, unlawfully, willfully and knowingly, would attempt to evade a large part of the income taxes due and owing by JACK LEVINE, the defendant, and his wife to the United States of America.

3. It was a further part of said conspiracy that the co-conspirators, unlawfully, willfully and knowingly, would make and subscribe and cause to be made and subscribed federal tax returns for JACK LEVINE, the defendant, and his wife which returns, even though verified under penalties of perjury and filed with the Internal Revenue Service, were false in certain material respects.

MICROFILM
MAY 25 1976

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. In or about late 1969 or early 1970, JACK LEVINE, the defendant, had a conversation with Martin Frank, wherein the tax advantages of a contribution of stock to The Hillel School were discussed.

2. Sometime during the period from the 1st day of February, 1970 up to not later than the 6th day of August 1970, JACK LEVINE, the defendant, donated 16,666 shares of common stock of Salem Electronics, Inc. to The Hillel School by delivering said shares to Martin Frank.

3. On or about the 6th day of August, 1970, JACK LEVINE, the defendant, signed a federal income tax return for the calendar year 1969, on which he claimed he had donated the stock mentioned in paragraph 2 above on May 26, 1969 to The Hillel School when in fact the donation was made in the year 1970.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 6th day of August, 1970, in the Southern District of New York, JACK LEVINE, the defendant, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1969, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed, in the Southern District of New York, a false and fraudulent income tax return on behalf of himself and his wife, which was filed with the Internal Revenue Service, wherein it was stated that their taxable income for said calendar year

was the sum of $33,650.00 and that the amount of income tax due and owing thereon was the sum of $12,742.74 whereas, as he then and there well knew, their taxable income for the said calendar year was the sum of $58,707.00, upon which said taxable income, there was owing to the United States of America an income tax of approximately $21,108.00.

(Title 26, United States Code, Section 7201.)

COUNT THREE

The Grand Jury further charges:

On or about the 6th day of August, 1970, in the Southern District of New York, JACK LEVINE, the defendant, did unlawfully, willfully and knowingly make and subscribe and cause to be made and subscribed a joint federal income tax return for the calendar year 1969 on behalf of himself and his wife, which while verified that it was made under penalties of perjury and filed with the Internal Revenue Service, the defendant did not believe to be true and correct as to every material matter, in that the defendant stated on said tax return and in the schedule annexed thereto that he and his wife had made a contribution of stock in 1969 to The Hillel School, which contribution they claimed as a charitable deduction, whereas as the defendant then and there well knew he had made the said contribution in 1970 rather than 1969 and was not entitled to claim this contribution as a deduction.

(Title 26, United States Code, Section 7206(1).)

Eugene Goldman
FOREMAN

Robert B Fiske Jr.
ROBERT B. FISKE, JR.
United States Attorney

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JACK LEVINE,

Defendant.

INDICTMENT

76 Cr.

(In violation of Title 18, United States Code, Section 371 and Title 26, United States Code, Sections 7201 and 7206(1).)

ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Eugene Goldman

Foreman.

FPI—88—2-19-71—20M—6756

U.S. DISTRICT COURT
FILED
MAY 24 1976
S. D. OF N.Y.

5/24/76 Indictment ordered filed.
Bruchhausen J.

High and Lally Berger present/
Extend N/G plea Case assigned to
Judge Bauer for all purposes 10 days
for Motions. High ordered F/P. Bail
Limits stands as heretofore fixed and bail
Agreed. Surrender Passport. R.O.C. To
Bruchhausen J.

JUL 13 1976 JURY EMPANELLED TRIAL BEGUN
Bauer J.

JUL 14 1976 TRIAL CONTD

JUL 15 1976 TRIAL CONTD GOVT REST. COUNSEL FOR
DEFT. MAKE TO DISMISS FOR JUDGEMENT OF ACQUITTAL
GRANTED AS TO CTS 1 DENIED CTS 2 3.

JUL 16 1976 TRIAL CONTD CTS 2 3 SUMMATION BY COUNSEL

JUL 17 1976 JURY VERDICT DEFT GUILTY CTS 2 3.
PRE-SENTENCE REPORT ORDERED SENT. 7/26
SET FOR SENTENCING DEFT A.O.R.

SENTENCE CTS 2 3.

SEPT. 7 1972 SENTENCE JACKLEMAN CITY FINGER PRINTED
CT 2 COMMITTED TO CUSTODY OF ATTY GEN FOR IMPRISONMENT
CT 3 IMPOSITION OF SENTENCE SUSPENDED PROBATION 2 YRS TO COMMENCE UPON RELEASE, PLACE OF CONFINEMENT ON CT 2
FINE $3,000 ON CT 2 $3 TOTAL FINE $3,000 TO BE PAID WITHIN 6 MONTHS. NOT COMMIT. BOND O.K. TO APPEAL. DEFT. TO REMAIN ON PRESENT BOND

A TRUE COPY
RAYMOND F. ZUFELDT, CLERK
By _____
Deputy Cl

United States of America vs.

United States District Court for

DEFENDANT: Jack Levine

Southern District of New York

JA 8

DOCKET NO. 76 Cr. 498

JUDGMENT AND PROBATION COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: 9 DAY: 7 YEAR: 76

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Kenneth Rath and John Rouge
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE. [X] NOT GUILTY

FINDING & JUDGMENT

There being a [illegible] verdict of
[ ] NOT GUILTY. Defendant is discharged
[X] GUILTY

Defendant has been convicted as charged of the offense(s) of unlawfully, willfully and knowingly attempting to evade and defeat a large part of the income tax due and owing to the U.S. A. by preparing and causing to be prepared, by signing and causing to be signed and by mailing and causing to be mailed a false and fraudulent income tax return. (Title 26, U.S. Code, Section 7201.); unlawfully, willfully and knowingly make and subscribe and cause to be made and subscribed a joint federal income tax return, the defendant did not believe to be true and correct as to every material matter. (Title 26, U.S. Code, Section 7206(1).)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 2 — 3 months imprisonment.
Count 3 — Imposition of Sentence suspended. Probation two years to commence upon release from place of confinement on Count 2.

SPECIAL CONDITIONS OF PROBATION

Fine — $3,000.00 on each count 2 and 3. Total fine $6,000.00 non-committed. Fine to be paid within six (6) months.

Advised of right of appeal. Defendant released on own recognizance pending appeal.

FILED AS EXHIBIT # 76,818

DATED Sept. 9, 1976

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

SEP 0 [illegible]

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

DISTRICT CT. FILED SEP 9 1976 S.D. OF N.Y.

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

Dudley B. Bonsal

Dudley B. Bonsal Date 9/7/76

5:00 PM

JA 9

UNITED STATES DISTRICT COURT

United States

v.

Jack Levine

Docket Number 76 Cr. 498

Hon. Dudley B. Bonsal
(District Court Judge)

NOTICE OF APPEAL

Notice is hereby given that Jack Levine appeals to the United States Court of Appeals for the Second Circuit from the ☐ judgment ☐ order ☐ other (specify) _____ entered in this action on Sept 7, 1976 (Date)

D. Dolan Rogge
(Counsel for Appellant)

Date Sept 7, 1976

Address 777 3d Ave
N.Y. N.Y. 10017

Phone Number (212) 421-6400

To: U.S. Attorney
Jack Levine
630 W. 246 St, Bronx

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY) TRANSCRIPT INFORMATION – FORM B

▶ QUESTIONNAIRE

☐ I am ordering a transcript
☑ I am not ordering a transcript
Reason:
☑ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

▶ DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATE).

Prepare transcript of
☐ Pre-trial proceedings
☐ Trial
☐ Sentence
☐ Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature D. Dolan Rogge | DATE Sept. 7, 1976

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.

Date _____ Signature _____ (Court Reporter)

ORIGINAL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

vs. 76 Cr. 498

JACK LEVINE,

Defendant.

Before: HON. DUDLEY B. BONSAL, D.J.

New York, July 13, 1976;
9.30 A.M.

APPEARANCES:

ROBERT B. FISKE, JR., ESQ., United States Attorney,
For the Government;
BY: Bancroft Littlefield, Jr., Esq., Assistant United States Attorney, of Counsel.

GEORGE BERGER, ESQ.,
and
KENNETH M. KATZ, ESQ.,
Attorneys for the Defendant;
BY: Kenneth M. Katz, Esq., of Counsel.

- - -

(The following took place in the robing room.)

THE COURT: I wanted you to come in. The case is set for trial this morning and I gather there are some problems still in connection with discovery. Is that correct?

MR. KATZ: Yes, your Honor. Last night -- let me go back a couple of days. On Friday we appeared before your Honor and your Honor directed that I meet with the Assistant United States Attorney.

THE COURT: That's right.

MR. KATZ: Which I did do, and the only information I got on Friday afternoon was the tapes of Mr. Kolatch. The other discovery material --

THE COURT: What other discovery?

MR. KATZ: A lot of Brady material that we had requested formally in a motion.

THE COURT: You have to be a little more specific.

MR. KATZ: Most was on information relating to Mr. Frank as to his past activities in order to impeach his credibility.

Now, I had made specific request not only in the motion but also included in a memorandum which I

supplied to Mr. Littlefield some time I believe on July 6.

Last night, your Honor, I got this raft of material and I was up late last night reading it, and I don't feel I am adequately prepared for trial this morning.

THE COURT: All this relates to Frank?

MR. KATZ: Most to Frank and some relates to other witnesses.

THE COURT: When is Frank going to testify?

MR. LITTLEFIELD: Essentially this is 35 material and it is material relating to Frank and Kolatch, the two principal government witnesses who will testify as the third and fourth witnesses or the second and third witnesses, and we take the position that we are turning this material over sooner than we have to because we don't have to turn it over until the testimony is completed on direct.

MR. KATZ: I might also add there is material that I had included in my memorandum which I still have not received. I just got some more information today, your Honor.

THE COURT: What information did you get today?

MR. LITTLEFIELD: A whole series of exhibits which the government intends to introduce at trial and additional 3500 material on Kolatch, and one further item

on Mr.Frank. JA 13

MR. KATZ: All of this material is not 3500 material.

THE COURT: Well, what I am going to do on this thing, as I understood the argument, there is certainly a lot of things that you wanted for the purpose of cross-examining Frank and the other fellow, and I think we better go ahead and when the direct examination of these witnesses is over with, I will be glad to sit down with you and see how much time --

MR. KATZ: That is not exactly true, because there is some information in here that leads me to believe -- for example, there is a transcript given to me concerning a certain broker and I think that that definitely warrants an additional --

THE COURT: What information?

MR. KATZ: A transcript that the United States Attorney gave me concerning one of the brokers that sold some of the stock in this case that has to do with the compensation Mr. Frank received.

THE COURT: The what?

MR. KATZ: The compensation that Mr. Frank received.

I think, your Honor, that I should be entitled

to be able to follow that lead.

THE COURT: Well, I think we will go ahead and I want to hear what the testimony is and I want to give you an opportunity on your cross-examination. When did you say you got this material? Last night?

MR. KATZ: 5 o'clock last night.

THE COURT: All right.

MR. KATZ: Your Honor, I am not asking for an inordinate delay, maybe only to the beginning of next week, so --

THE COURT: I can't do that, I am sorry. I am sorry, I have case after case.

MR. KATZ: Your Honor, also on Friday you said that this case would not go on until Wednesday.

THE COURT: Something happened and another defendant is in the hospital and I couldn't do anything about that.

MR. KATZ: I am faced with the fact that I have to give my client the best defense available and I don't believe that I can do that without being given some additional days so I can go through this material. I haven't had that opportunity.

I have been after the United States Attorney since June for this material.

THE COURT: What do you say?

MR. LITTLEFIELD: That motion as to Brady was first received by the government last week, on Thursday, your Honor recalls that. There was an extensive list of bill of particulars -- may I finish? The government has turned over in advance of trial materal that we normally do not turn over until during the trial, so he would have time to review it.

This material does not require further investigation, your Honor. That would be the only circumstance under which perhaps he should be given more time. It is all self-contained.

MR. KATZ: It is not, your Honor.

THE COURT: That doesn't help me at all. You fellows differ on this thing and I have got to go ahead with the trial. I will consider it and I would like to hear the evidence and I will consider your application.

MR. KATZ: Can we continue it at least a day or so, so I can at least have the opportunity to go through this?

THE COURT: Well, you got it at 5 o'clock and most of these things that you get, it really doesn't take all that time.

* * *

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MR. LITTLEFIELD: Perhaps a half-hour.

THE COURT: If necessary, we can after we hear Frank, we can adjourn until tomorrow.

MR. KATZ: Is your Honor planning we pick the jury and open today?

THE COURT: That is what I would like to do.

MR. KATZ: Can we just start this in the morning and give me an opportunity to go through this material? I am not asking for an inordinate delay.

THE COURT: It is now a quarter of 10 and I will put it over until 2 o'clock, and you will have all morning to read this material. I think that is adequate.

Let us do that, and I would like to pick the jury and get the openings and the direct testimony of the first witness and give you some more time on your cross-examination, if it works out that way. I think that is fair enough. Shall we do that?

MR, LITTLEFIELD: May I ask one more thing? That the defendant be ordered not to turn over any of this discovery material to any other lawyers or any other defendants in any other related cases?

That is turned over solely for use by Mr. Berger and Mr. Katz in this case.

THE COURT: Of course, he understands that.

* * *

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and we can conclude before the other people in the City of New York, including convention people, try to get on the subway. We will have a luncheon break and recess in the morning and in the afternoon.

All right, ladies and gentlemen, we will take a recess right now. Mr. Wallace will show you to the jury room.

(The jury left the courtroom.)

THE COURT: Mr. Katz, I understand you wanted to make some kind of an application.

MR. KATZ: Yes, your Honor. I object to the trial starting at this time, your Honor. I take exception to the trial starting today. I have not had time to sift through the information that was given to me. In addition to t :, your Honor, all the information requested was not given to me and I feel that this fast trial will prevent an adequate defense of my client.

THE COURT: You made your statement. Do you want to say anything, Mr. Littlefield?

MR. LITTLEFIELD: Only that perhaps we should know what it is he claims hasn't been given to him so if there is some problem it can be resolved.

MR. KATZ: I believe on Friday or one day last

week -- I don't remember exactly -- I asked Mr. Littlefield for certain information which was contained in a memorandum. He never answered me as to whether he would deliver to me that material or not. He only said that if I was entitled to it I would get it.

THE COURT: The problem is what material is it you are talking about?

MR. KATZ: Your Honor, it was material that was in relationship to Mr. Frank. There was certain additional material that was not given to me concerning Mr. Frank based on certain Swiss bank accounts and based on certain other transactions that Mr. Frank had, namely, with the Bank Hoffman in Switzerland, a company called Resource Control Corporation and a company called Bio Derivatives.

In addition, your Honor, I had asked Mr. Littlefield specifically for a letter from Jerry Allen that he had written to a Federal judge and --

MR. LITTLEFIELD: I have that letter. I will get that for him very shortly.

THE COURT: How about this other material?

MR. LITTLEFIELD: The Government has turned over all material it was required to turn under Brady versus Maryland, all material relevant to cross-examination

ly versus Maryland of Mr. Frank. That is what our obligation is. There is no more material.

THE COURT: You mentioned some kind of foundation, did you? What did you mention other than the letter from the Federal judge? You mentioned a couple of names.

MR. KATZ: Yes, I mentioned the Bank Hoffman and I mentioned the Swiss bank accounts.

THE COURT: Yes, the Swiss bank accounts. What about the Bank Hoffman?

MR. KATZ: The Bank Hoffman is a Swiss bank.

THE COURT: Do you have anything about the Bank Hoffman?

MR. LITTLEFIELD: Some of it was gone into previously on the Frank trial as to which we have given defense counsel the slip opinion, the opinion of the Court of Appeals and directing their attention to that case. Beyond that there is no other material.

THE COURT: You've got no other material?

MR. LITTLEFIELD: That is right.

THE COURT: I have noted it and he'll get you that letter from the Federal judge.

MR. KATZ: There is another company called Basic Sciences Incorporated.

THE COURT: What about that, Basic Sciences Incorporated?

MR. LITTLEFIELD: We have no information other than what came out on the trial if anything.

MR. KATZ: One more, if I may, your Honor, still another item in reference to Martin Frank's activities with Supreme Court Justice Joseph Pfingst including information about Leasing Consultants, Inc.

MR. LITTLEFIELD: I have consulted with the Assistant U. S. Attorney who handled the prior Frank trial, Ira Sorkin. He advises we have nothing beyond what is contained in that trial that we would be obligated to turn over under Brady or any other similar rule.

2 THE COURT: All right.

MR. KATZ: There is one other thing, your Honor:

On a previous occasion I had asked Mr. Littlefield whether there were any tape recordings.

THE COURT: I think we had all that out, didn't we?

MR. KATZ: I think your Honor is referring to Mr. Frank's tape, which I listened to. I had asked Mr. Littlefield previously for any tapes of my client.

Initially he said no and then the other day he gave me a transcript of a telephone conversation.

MR. LITTLEFIELD: I'm going to give him what he is asking for, I think.

MR. KATZ: Let me finish.

THE COURT: Let's not waste any more time. You want another tape and he says he will give it to you.

MR. KATZ: Were there any more tapes of my client of any kind or nature?

THE COURT: Are there?

MR. LITTLEFIELD: Mr. Levine called Mr. Kolatch in March, your Honor, Mr. Kolatch being director of the Hillel School, who will be a Government witness. Mr. Kolatch taped this very brief conversation. I gave the transcript of the tape to Mr. Katz yesterday. I advised Mr. Kolatch that I wanted the tape as well, which is about one and a half minutes in length. He advised me he would bring it in. He also tells me it is identical with the transcript. He will bring it in tonight.

THE COURT: Any other tape than that?

MR. LITTLEFIELD: No, your Honor, and Mr. Katz can listen to that tape at five o'clock today.

MR. KATZ: Is he coming in today with the tape?

MR. LITTLEFIELD: Yes.

THE COURT: All right. We will take five minutes.

MR. KATZ: One more thing, if I may, your Honor:

You have referred to the Martin Frank tape. I would like that tape played for the jury. I would like the jury to have earphones so that they may listen to that tape.

THE COURT: That is in your case. We don't get to that for a while.

(Recess.)

* * *

UNITED STATES OF AMERICA

vs. 76 Cr. 498

JACK LEVINE.

New York, July 14, 1976;
10.00 o'clock a.m.

(Trial resumed.)

- -

THE COURT: I think there is an additional face at the defense table this morning.

MR. KATZ: I would like to introduce to the jury my partner George Berger.

THE COURT: All right.

MR. BERGER: Good morning, ladies and gentlemen.

THE COURT: Mr. Littlefield, you may proceed.

MR. LITTLEFIELD: The Government calls Martin Frank, your Honor.

- -

M A R T I N F R A N K , called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q Mr. Frank, where were you born and when?

A August 11, 1925; Brooklyn, New York.

Q Will you please speak up loud and clear so we can hear you all the way to the back of the courtroom, please?

Where did you go to college and law school?

A I went to New York University and to St. John's University School of Law.

Q When did you graduate from college?

A 1950.

Q Where did you go after that?

A Went to law school.

Q When did you graduate from law school?

A 1952, St. John's University.

Q After you graduated from law school were you admitted to the bar to practice law?

A Yes.

Q How many years did you practice law?

A Approximately 23 years.

Q Have you recently submitted your resignation from the bar?

A Yes.

Q When was that?

A February of 1976.

Q What kind of legal work did you do as an attorney

between 1952 and 1976 when you resigned from the bar?

A Mostly commercial practice and the last 15 years specialized in securities work.

Q Will you please keep your voice up?

A In securities work.

Q Just a little louder because there are distractions outside and the acoustics aren't that good. Please keep your voice up loud.

What kind of securities work specifically?

A Underwritings, taking of private companies public, selling securities in t he public market, corporate mergers of public and private corporations.

Q Where was your office most recently?

A 144 East 44th Street in Manhattan.

Q Why did you submit your resignation from the bar?

A I had been convicted of the crime of conspiracy to violate the securities law and I was under indictment in another matter in connection with tax evasion.

Q Had you been sentenced upon the conviction of conspiracy to violate the securities law?

A Yes, I was.

Q When were you sentenced?

A December, 1974.

Q What was your sentence?

A Two years imprisonment and $2500 fine.

Q Now, directing your attention to back before you resigned from the bar, in your capacity as attorney did you meet Mr. Levine?

A Yes, I did.

Q Do you see Mr. Levine in the courtroom?

A Yes.

Q Will you please point him out?

A The gentleman on my far right, the second table.

MR. LITTLEFIELD: May the record reflect that the witness has identified Mr. Levine, your Honor?

THE COURT: All right.

When did you meet Mr. Levine, Mr. Frank?

THE WITNESS: Approximately 1960.

Q In what connection did you meet Mr. Levine?

A Mr. Levine consulted me as an attorney.

Q In what business was he at that particular time?

A Securities industry.

Q Did you provide legal service for him when he first consulted you?

A Yes, I did.

Q And did you continue to represent him during the next years following 1960?

A For a great many years.

Q In what capacity did you represent him?

A As an attorney.

Q What specific kind of work did you do for him?

A Mr. Levine was the head of his brokerage firm and I represented the brokerage firm in connection with its securities business.

(Continued on next page.)

T2

Q In addition to being Mr. Levine's attorney in the securities business, did you and he become friends?

A Yes, we did.

Q Did you see each other often?

A Quite often.

Q Approximately how often?

A At times once a week, sometimes twice a week.

Q What sort of activities did you engage in as friends?

A Went to dinner, went to lunch.

Q How long did that continue?

A It continued until 1972, when Mr. Levine left New York, his business interests were elsewhere, and I didn't see him as often after that.

Q During the time that you knew Mr. Levine, where did he live?

A In Riverdale, New York, on 246th Street.

Q Now, Mr. Frank, are you familiar with The Hillel School?

A Yes, I am.

Q What is The Hillel School, and where is it?

A It is in Lawrence, New York. It is a Yeshiva.

Q This is on Long Island?

A Yes.

THE COURT: You say it is a Heshiva. What does that mean?

THE WITNESS: It is a Jewish parochial school.

THE COURT: Jewish parochial school? All right.

Q In what connection did you become familiar with the school?

A I enrolled my daughter in the school for the September, 1968, term.

Q What grade was she in?

A Second grade.

Q Did you meet at the school a man named David Kolatch?

A Yes, I did.

Q What was his position?

A He was, and still is, I believe, the school administrator.

Q Did you have discussions with him about raising money for the school?

A Yes, I did.

Q What specifically were you talking about? I refer first to discussions you might have had in general about parents.

A Mr. Kolatch told me and my wife as a parent of a student, that the school had no endowment funds.

MR. BERGER: Objection, your Honor. We are going to object to the testimony at this time on the grounds that we are discussing a conspiracy, and this is a conversation had between --

THE COURT: I will receive this within the limit subject to connection, because this conversation is no evidence that Mr. Levine was there. I will take it subject to connection.

You were discussing the finances of the school with this gentleman, is that right?

THE WITNESS: Yes, your Honor.

Mr. Kolatch said that he believed that the parents of the students should try to assist the school whenever possible and try to get money and raise money for the school; and he generally discussed the fact that the school gave scholarships to students whose parents couldn't afford the tuition; and this also created a deficit, and that as parents in the school, that he felt we have some obligation to assist in any way we could financially.

Q Did there come a time that you had a conversation with Mr. Kolatch concerning donations of stock,

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securities?

A Yes.

Q When was that?

a November or December of 1968, of 1969.

Q Did he know what business you were engaged in?

A Yes, he did.

Q How did he know that?

A I had told him.

Q Wha had you told him?

A I told him in our earlier discussion that it was difficult for me to go out to solicit people to give cash and that as an attorney I would then be in a way to give services at a reduced rate.

Q I can't understand what you are saying, because you are talking very quickly and you will have to raise your voice.

A I told Mr. Kolatch that I was an attorney and that the majority and bulk of my practice was representing broker-dealers in securities.

Q Did there come a time when you had a specific conversation with him about securities donations?

A Yes, donations.

Q Yes?

A Yes, I did.

Q What did you say to him, what did he say to you?

THE COURT: Tell us when this was, if you remember.

THE WITNESS: November or December of 1969.

Q What did you say to him?

A I don't remember the occasion of the discussion, but Mr. Kolatch raised the question of obtaining donations for the school, that they were in dire need of moneys. I told him that there was a possibility that I could obtain restricted stock from some of my broker-dealer clients.

THE COURT: What do you mean by restricted stock?

THE WITNESS: Securities which were not freely marketable, your Honor.

Q What does that mean, securities that are not freely marketable?

A These are securities which a public corporation issues, but is not registered under the Act, the Securities Act. These are securities which the holder cannot sell into the market and obtain the marketprice. These are securities which they must hold for a period.

Q Are there other words that are synonymous with restricted stock that is used in the industry to describe

this stock that is not freely tradable on the market?

A Yes.

MR. BERGER: Objection, your Honor. Is he now asking for a legal opinion, or is he asking --

THE COURT: He is just asking him if he knows. What do you call it?

THE WITNESS: Investment securities, restricted securities are used synonymously in the industry, your Honor.

Q Is unregistered --

A Unregistered is also used synonymously with those two other words, yes.

Q If you will continue with what you told Mr. Kolatch?

A I told Mr. Kolatch that I knew that certain charitable institutions were obtaining donations of unregistered securities by accommodating the donor in giving him a letter accepting the donation at a date that the donor would pick, thereby enabling the donor to get the benefit of the largest gift tax deduction possible.

Q Had you had experience with backdated donations yourself?

A Yes, I had.

Q And had you in fact given other charity of your own restricted stock?

A I did it the preceding year, 1968.

Q And you had letters backdated to 1968?

A Yes.

Q And taken it on your 1969 tax return?

A Yes.

Q Following this conversation with Mr. Kolatch, did you contact any brokers about what you and he had discussed?

A Yes, I did.

Q When did you contact these people, and who generally did you contact?

A I contacted these people in the beginning of 1970, and I contacted broker-dealer clients I had and others in the securities industry or persons who I knew had investment stock.

Q Was Jack Levine among those that you contacted?

A Yes, he was.

Q Could you tell us when you contacted him, to the best of your recollection?

A February of 1970.

THE COURT: February of 1970, sir?

THE WITNESS: Yes.

Q How did you contact him?

A It was either by a telephone call from me to him at his office, or during an in-person meeting.

Q Where would the in-person meeting have been if it was that way?

A In my office.

Q Where was your office, again?

A East 44th Street in New York.

Q What did you say to Mr. Levine on this occasion, and what did he say to you?

A I told Mr. Levine that I was trying to raise some money for The Hillel School that my daughter attended. I told him that I knew he and other people in the securities industry had this investment stock, and that since it was February, he hadn't as yet filed his tax returns in all probability, that if he made a donation of his investment stock to the school, the school would give him a letter, backdated letter, acknowleding the donation on any date he wanted in 1969; that he could pick any time during the entire year of 1969 at which point the stock had the best possible price, so that he could get the best possible tax advantage.

Q Had he heard of The Hillel School or did he have any contact with The Hillel School, if you know?

A I don't know.

Q Did he indicate to you that he knew anything about The Hillel School?

A No, he did not.

Q Did you tell him anything more about the tax, or did you discuss anything further with him about the tax advantage of doing this?

A In the discussion I told him that this would also enable him to carry forward under the then tax law the unexpired portion of the gift into additional tax years.

Q What does that mean, carry forward?

A Under the tax law, you are only allowed to deduct for charitable contributions a certain percentage of your gross income. If your donation exceeds that percentage, you may take the balance in the succeeding tax years.

Q That is what is called a carry forward, so that if you took a certain amount, if you had a deduction of X amount of money, that you could only use part of that because you could only use up to 30 per cent of your income in one year, you could then carry over --

THE COURT: I don't think he said anything about 30 per cent.

Is that your understanding?

THE WITNESS: That is my understanding, that it was at that time, sir.

THE COURT: You could take a charitable deduction in one year up to 30 per cent of your gross income, but not beyond it, is that right?

THE WITNESS: That's right. For example, if your income was a hundred thousand dollars, you could only deduct $30,000 that year, but if your gift was a hundred thousand, you would now have 70,000 available for future years.

THE COURT: I see.

Q That is what is called carry forward?

A Yes.

Q Did you discuss with him anything about the characteristics of investment stock that made it -- made this a good way of dealing with the investment stock, a good use for it to be put?

A Mr. Levine was quite knowledgeable with investment stock.

THE COURT: The question is whether you discussed it with him. That is the question.

THE WITNESS: I told him that by doing this type of donation, the tax benefit would far exceed the possible gain he could make by selling the stock for cash, if he

could sell it, since it was restricted. He couldn't even sell that to realize the cash, but that his cash saving on his taxes would far exceed what he could receive for the sale of the investment stock.

Q What did Mr. Levine say when you made this proposal to him?

A He said, "I will let you know."

Q What happened next?

A About a week or ten days later, Mr. Levine called me.

Q I beg your pardon?

A Mr. Levine called me about a week or ten days later.

THE COUPT: This is when, February of 1970, is that right?

THE WITNESS: Yes, your Honor.

Q What did Mr. Levine tell you?

A Told me that he had a stock that he wanted to give to the school and that the name of the stock was Salem Electronics.

THE COURT: Salem Electronics?

THE WITNESS: Yes. He told me the number of shares. I then asked him for the date, and he said he will have to let me know about the date. That was the sum and

substance of that conversation.

Q What happened next?

A About a day or two later he called me again, and he gave me a date sometime in 1969. I told him that I would prepare a letter accompanying the gift to the school, and that he will have to come down and sign when he brings the stock.

Q Did you tell him what date you would put on the letter?

A I told him the date on the letter would be the date he gave me on the phone.

Q Subsequently, did he come down and bring the stock?

A Yes, he did.

THE COURT: Where was that, sir, came down where?

THE WITNESS: To my office.

THE COURT: To your office.

Q At that point in what condition was the stock?

A It was in his name, and it was endorsed on the back.

Q What is the significance of the endorsement on the back?

A It is an indication that the owner of the stock was transferring it, divesting himself of his ownership of the stock.

Q Is there another form that could be used to do that?

A Yes.

Q What is that?

A Instead of endorsing it you execute a stock power which is a piece of paper which bears the signature of the individual whose name is on the stock certificate and the signature again attached to the stock certificate.

Q In connection with an endorsement on the back, what is needed to make the endorsement effective?

A A guarantee of the signature by either a member firm of the New York Stock Exchange or a national bank.

Q Absent a guarantee of the signature by either a member firm of the New York Stock Exchange or by a national bank, what good is the stock?

A The transfer agent would generally refuse to accept the stock for transfer because they have a question as to that guarantee of the signature.

Q So until the stock has either a stock power which enables it to be transferred and sold or --

MR. BERGER: Objection.

THE COURT: I think the witness is saying that the transfer of the stock of the company where the corporation has a transfer agent, the signature on the stock power or the endorsement on the stock certificate has to be guaranteed by a member firm of the New York Stock Exchange or a national bank, is that it?

THE WITNESS: Yes.

THE COURT: That is all there is to it.

Q Had you discussed with Mr. Kolatch the need for the stock to be either endorsed or accompanied by a stock power to be negotiable?

A I told him the stock would be in the form of a gift and the donor would convey all of his interest in the stock certificate.

Q If the stock hadn't --

THE COURT: Wait a minute, I will sustain an objection to that.

Q Now, prior to Mr. Levine's arriving with his stock certificate had you prepared a letter?

A I prepared a letter which contained information concerning the gift, to wit, the name of the company, the

number of shares and the certificate number, addressed from the donor Mr. Levine to the Hillel School.

I also called up Mr. Kolaltch and gave him the same information and told him to prepare an acknowledgement letter, acknowledging receipt of the gift.

Q I show you what has been marked Government's Exhibit 7 for identification and ask if you recognize that?

A Yes, I do.

Q What is it?

MR. BERGER: May I see this, please?

THE COUT: What is this?

A That is a letter I prepared in my office which was signed by Mr. Levine.

THE COURT: What is the date on the letter?

THE WITNESS: May 26, 1969 and the letter which accompanied the stock certificate of Salem Electronics.

Q I show you what has been marked as Government's Exhibit 8 for identification and ask you if you recognize that?

A Yes.

Q What is that?

A That is the stock certificate that Mr. Levine delivered to me.

Q Is it in the condition that it was delivered to you by Mr. Levine?

A Yes.

MR. LITTLEFIELD: The Government offers Government Exhibits 7 and 8 in evidence.

MR. BERGER: If your Honor please, at this time we object to the introduction of Government's Exhibit 7, specifically the letter that is addressed to the Hillel School.

THE COURT: Let me see it, please.

MR. BERGER: We have a specific reason for the objection which we could recite to the Court.

(Handed to Court.)

THE COURT: Mr. Frank, as I understand this letter was signed in your office, is that right?

THE WITNESS: Yes, your Honor.

THE COURT: In your presence?

THE WITNESS: Yes, your Honor.

THE COURT: I will receive it.

(Government's Exhibit 7 for identification was received in evidence.)

xx MR. BERGER: If your Honor please, at this time I would like to move the Court since this is the first time we have seen that exhibit --

MR. LITTLEFIELD: I object to that, that is not true. Mr. Katz saw it in my office last week.

THE COURT: Never mind all that now.

MR. LITTLEFIELD: Is the record clear on that, Mr. Berger, Mr. Katz saw it?

MR. BERGER: Mr. Katz saw it.

THE COURT: Do you object to 8?

MR. BERGER: No, we do not object to the exhibit here but the letter.

THE COURT: Government's Exhibit 8 is received in evidence.

(Government's Exhibit 8 for identification was received in evidence.)

xx 2 MR. BERGER: Again, your Honor --

THE COURT: Please, now, let's move along.

MR. BERGER: It does relate to that exhibit.

THE COURT: Never mind that, I have received the exhibit and you can take this up later on.

Q I refer you specifically to the back of the sale and stock certificate and ask you if this signature appeared on it when you got it, Jack Levine?

A Yes, it did.

Q Was the Jack Levine signature guaranteed by Continental Securities, which in turn was guaranteed by

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the Chemical Bank?

A Yes, it was.

Q Is the Chemical Bank a national bank?

A Yes, it is.

Q Is Continental Securities a member firm of the New York Stock Exchange or not?

A I don't believe they are.

Q So in order for their guarantee to be effective --

MR. BERGER: Objection.

THE COURT: Let's not get into that. The point is the signature of Chemical Bank is there.

THE WITNESS: Yes, it is.

THE COURT: All right.

MR. LITTLEFIELD: May I pass these to the jury, your Honor?

THE COURT: Yes.

(Exhibits handed to jury.)

Q After you received the stock from Mr. Levine and after you prepared the letter and he signed it, what did you do next?

A I called up Mr. Kolatch and told him that the stock was in my office, the letter was signed and that I would deliver it to him.

Q When to the best of your recollection did this

occur, the stock was turned over to you and you delivered it to Mr. Kolatch?

A At this point it was about the first or second week in March, 1970.

Q Was this the first contribution that you made to the school? Was this the first stock contribution you arranged through one of your clients to make to the school?

THE COURT: That question is complicated. Are you talking about his personal contribution?

MR. LITTLEFIELD: No, sir.

Q Prior to the Salem Electronics stock contribution which you arranged to be made to the school, had you delivered any stock to the school for any other of your clients?

A Yes, I had.

Q Who was that?

A Jesse J. Krieger.

Q What stock was involved there?

A Prevor Mayrsohn.

Q Was that stock restricted or unrestricted?

A Unrestricted.

Q So the school could sell it right away?

A Yes.

Q And do you know whether the school tried to sell it right away?

A Yes, the school did try to sell it right away.

Q Do you know approximately what day they tried to sell it?

A The date of the sale appears on the records of the broker who was selling it. I have sen those records.

MR. BERGER: Your Honor, I object to this testimony. I don't understand what relevance it has to this case.

THE COURT: Wait a minute. I think that all I see this was you arranged prior gifts to the school, is that right?

THE WITNESS: Yes, your Honor.

THE COURT: That is all it was.

Q I show you what has been marked as Government's Exhibit 9 for identification and ask you if looking at these documents refreshes your recollection as to the date on which the stock was contributed, taken by you to the school and in turn sold by the school through its broker?

A Yes.

Q When is that?

A The first sale was the 2nd of March 1970. Taken to the school approximately about the middle two weeks of February, 1970.

Q The Krieger-Prevor Mayrsohn?

A Yes.

Q Is it your testimony the Levine stock was taken to the school after the Krieger stock?

A Yes, it was.

Q In your discussion with Mr. Kolatch when you called him up to tell him up to tell him you had the stock, did you discuss the letter of acknowledgment that the school should prepare?

A I told him, I read him the information again, the name of the stock, the number of shares and the name and address of the donor and the date of the letter and told him I was bringing the stock on Sunday and make sure the letter got to the donor.

Q Did you in fact then deliver the stock with the letter, Government's Exhibit 7, to Mr. Kolatch?

A The following Sunday morning.

THE COURT: Where?

THE WITNESS: At the Hill School.

Q Now, aside from the letters which were involved, the accompanying letter and the letter of acknowledgment,

did you keep any records of the actual date that you received the stock?

A No, I didn't.

Q Did you discuss with Mr. Kolatch keeping records?

A Mr. Kolatch discussed the school keeping records.

Q What was that discussion?

A He told me that, in an earlier discussion told me the school did not keep records of when it received donations but merely put the donation or the stock donation in its safe.

Q Did you later discuss with Mr. Kolatch whether or not he sent out the letter of acknowledgment to Mr. Levine?

A I think I did.

THE COURT: Do you recall?

THE WITNESS: He said he took care of it.

THE COURT: Do you remember?

THE WITNESS: Not specifically.

THE COURT: You recall there may have been a discussion but not what was said?

THE WITNESS: No.

Q In connection with these letters of acknowledgment the school was to send out, how was the date on the letter of acknowledgment to relate to the date on the

letter of transmittal, the letter that you took with the stock which had one date on it, what were Mr. Kolatch's instructions in terms of the date that should be put on the thank you letter, the letter of acknowledgment from the school to the donor?

A That the letter of acknowledgment from the school should be dated no more than a few days after the date of the donor letter or, in the body of the letter from the school if it was going to be delayed a week or so, it should refer to the donation of blank, blank, 1969.

Q Did you speak to Mr. Levine about this contribution again as far as you know?

A I don't think we ever spoke again about it.

Q During the years following 1970 did you continue to arrange stock contributions for the school?

A Yes, I did.

Q Approximately through what year?

A 1973.

Q At the time that you were arranging the Krieger contribution and the Levine contribution, was there a project at the school that the contributions were related to?

MR. BERGER: Your Honor --

THE COURT: Wait a minute, I don't understand that question.

MR. LITTLEFIELD: I will rephrase it, your Honor.

Q At the time that you arranged the Levine contribution to the school and the Krieger contribution to the school, did Mr. Kolatch tell you about a project that the school was undertaking which these contributions would be related to?

MR. BERGER: I object to the form of the question, your Honor.

THE COURT: Well, I will take it subject to connection. I don't see there is any evidence Mr. Levine knew anything about that.

Did Mr. Kolatch tell you about a project at the school for this type of gifft?

THE WITNESS: Yes.

THE COURT: When was that?

THE WITNESS: In 1969 I had the discussion.

THE COURT: Prior to the gift you are testifying to.

THE WITNESS: In November and December we discussed arranging these gifts.

Q What was the project?

A The school was building a high school.

Q These gifts would be applied to the high school?

A We hoped to use the money to construct a high school.

Q Mr. Frank, you testified earlier that you had been indicted and convicted of a conspiracy to violate the securities laws, is that correct?

A That is correct.

Q When exactly were you indicted for the conspiracy?

A February 15, 1974.

Q When were you convicted?

A December 1974.

Q When did you begin serving the two-year prison sentence about which you spoke earlier?

A September 1 975.

Q Did there come a time after you began serving the prison sentence in September 1975 that you were indicted by the Federal Court in the Southern District of New York a second time?

A Yes.

Q What was that indictment for?

A Tax evasion.

Q Specifically, what were the charges in that indictment?

A Backdating gifts to charities.

Q Your own gifts?

A Yes.

Q Included in that was a gift to the Hillel School?

A Yes.

Q By yourself?

A Yes.

Q That had been backdated?

A Yes, it was.

Q Did there come a time after you started serving your sentence when you started providing information to the Government about other criminal acts committed bu yourself and by others?

A Yes.

Q In the course of the discussion you had with the Government prosecutors and agents, did you describe certain criminal acts committed by yourself?

A Yes, I did.

Q Could you tell the jury what some of those were?

A I discussed my own tax evasion crimes, back-dated donations.

I discussed my participation in the backdating

of gifts for others, more particularly for the Hillel School including Mr. Levine.

I discussed with the Governmen the fact that I tried to obtain the signature of an individual to an affidavit that contained false information.

I discussed with the Government the fact that I as a member of a law firm, I participated in income which was received through appointments in which fee sharing was taking place on an unreported basis.

I advised the Government that I had taken securities that belonged to a client of mine and sold them and kept the proceeds for myself.

I discussed with the Government the fact that I told lies to two individuals to obtain money from them so I could protect the interest of another client of mine by seeing that his girl friend wouldn't blow up his business.

Q Blow what?

A Wouldn't reveal to the prosecutors --

Q Blow up? You mean blow up -- the sense of explode?

A Blow up in the sense of destroy his business.

Q In what sense?

A If this witness told of the fact that my client

had used her as a nominee and other people as a nominee, it would in fact destroy my client's business.

Q Now, in April 1976 did you plead guilty to two counts of income tax evasion in connection with your indictment for tax evasion relating to backdated contributions?

A Yes, I did.

Q Including a contribution to the Hillel School?

A Yes, I did.

Q On June 29, 1976 were you sentenced on the tax evasion guilty plea and also on that date on a motion which you had made to have your sentence on the stock conspiracy reduced, were both of those matters heard on June 29, 1976?

A Yes, they were.

Q Was that in this Court House by a Federal judge?

A Yes.

Q Who was the judge?

A Judge Henry Werker.

Q What was the sentence and the resolution of the motion to reduce your conspiracy sentence?

A The sentence in the tax evasion was five years imprisonment, sentence suspended and placed on probation

for three years and fined $5000.

The determination of my Rule 35 motion was a reduction of my sentence to nine months and one week imprisonment.

Q What position did the Government take in court on that day? What was the Government's position?

A The Government made no recommendation to the Court either on the sentence or on my Rule 35 motion.

Q Did the Government disclose a certain agreement, written agreement, which had been entered into between the Government and yourself relating to cooperation?

A It disclosed and handed it up to the Court.

Q What else did the judge have before him, other information, on the date of the sentence?

A He had before him the two letters which I wrote to the Court which constituted my Rule 35 motion for reduction and modification.

Q Was one of the conditions of probation imposed by Judge Werker that you testify when called upon by the Government?

A Yes, it was.

Q In cases which were under investigation based on information you provided?

A Yes, that is correct.

MR. LITTLEFIELD: May I have a moment, your Honor?

(Pause.)

MR. LITTLEFIELD: I have no further questions of Mr. Frank.

CROSS EXAMINATION

XX BY MR. BERGER:

Q Mr. Frank, based on your testimony you have high motivation for cooperating with the Government, that right?

A No.

Q You have a motivation for staying out of jail, is that correct?

A I am sorry, I don't understand that question.

THE COURT: Everybody has a motivation to stay out of jail.

THE WITNESS: Nobody wants to go to jail.

THE COURT: I would think so.

Q Well, you testified that you made a deal with the Government that you would cooperate?

A No, I did not say I made a deal with the Government.

Q There is a letter indicating an agreement?

A Yes, there is a signed agreement of June 1976.

Q There is a letter by the Government, an Assistant Attorney, to Judge Werker, is that correct?

A I would have to see the letter.

THE COURT: Do you know?

THE WITNESS: Yes, I know there is a letter.

THE COURT: All right.

Q In that letter is it not a fact that it states that for your continued cooperation?

MR. LITTLEFIELD: Will you wait a second, please? I want to get a copy of the letter.

Which exhibit number is that, please?

MR. BERGER: That is your Exhibit F-10.

Q Is it not a fact that in consideration for your cooperation with the Government, this was the basis for your suspended sentence and for your reduction of sentence that you received and why you are here sitting in that chair today and not in jail?

A I assume the judge took that into consideration.

Q So you do have a motivation and a high motivation for being here? Just yes or no.

A If the motivation --

Q Just answer the question, Mr. Frank?

THE COURT: You can answer the question.

A Yes.

Q Some two years earlier you also came up for sentencing and at that time --

MR. BERGER: Excuse me, your Honor, I will rephrase it.

Q You were involved in a case entitled United States against Martin Frank?

A Correct.

Q You were found guilty of the crime you testified to in that case, is that correct?

A I was found guilty of conspiracy, yes.

Q You were sentenced in that case?

A Yes, I was.

Q And was there a sentencing memorandum and a recommendation at that time by the Governnent to your knowledge?

A Yes, I believe there was.

Q Was that sentencing memorandum to your knowledge any different from the recommendation, the letter sent to Judge Werker?

MR. LITTLEFIELD: Objection, he said there was no recommendation.

THE COURT: I have trouble understanding the question on that.

Is the question did the Government make the

same recommendation two years ago as they made recently?

MR. BERGER: Precisely.

A I never read --

THE COURT: You don't know?

A -- the 1974 memorandum.

Q Did the Government recommend any stiff sentence?

THE COURT: I don't understand what that question means.

MR. BERGER: In the sentencing memorandum, your Honor.

THE COURT: I don't know what you mean by a stiff sentence.

Did the Government recommend if you know the sentence on that occasion?

THE WITNESS: I never read the document.

THE COURT: You don't know.

Q Mr. Frank, you testified that you had prepared a letter which is Government's Exhibit 7 in your office to the Hillel School in connection with the contribution of the Salem Electronics, is that correct?

A Exhibit 7 was prepared in my office.

Q At the time you prepared the letter, to your knowledge was it on this piece of paper?

THE COURT: Do you recall whether it was on this paper?

Q I show you the exhibit again?

A It is the letter prepared in my office.

(Continued on next page.)

T4 THE COURT: Do you recall that it was on that kind of paper?

THE WITNESS: That is the letter that was prepared.

THE COURT: That was the letter that was prepared?

MR. BERGER: Thank you, your Honor.

THE COURT: All right.

Q Did this letter at the time of your preparation contain Mr. Levine's signature prior to your typing the letter?

A No, it did not.

Q So it is your testimony that you signed this letter after you prepared it, is that correct?

A After I prepared it with the information, yes.

Q Without being an expert in typing machinery or manuscripts of any sort, Mr. Frank, I am going to ask you to examine the signature line on this letter. Take a good look at it.

A Yes.

Q Do you have good eyesight?

THE COURT: Don't ask that. He has looked at it. You asked him to look at it, and he has looked at it.

Q Does the line on this letter from your observa-

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tion appear over the bottom sweep of Mr. Levine's signature, or under it?

MR. LITTLEFIELD: Your Honor, objection. His view of it is not better than anybody else's. He can show it to the jury, and they can look at it.

THE COURT: How it looks to him, he can answer that question.

You can answer the question as to whether it appears in relation to the line, is that the question?

MR. BERGER: Correct, your Honor.

THE COURT: How does it appear in relation to the line?

THE WITNESS: It appears that it was signed above the line where it should be signed.

THE COURT: Okay.

Q I am going to show this to the members of the jury and ask them to reexamine.

THE COURT: Just give it to them. Let them examine it. They have heard the question. By the way, you are married, Mr. Frank, is that so?

THE WITNESS: Yes.

Q You have how many children?

A Three.

Q One of your children's names is Lance?

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A That is correct.

Q Does that also happen to be the name of your Swiss bank account?

A It was a Swiss bank account I did open.

Q When did you open that Swiss bank account?

A Either in 1967 or 1968.

Q How long did you maintain that Swiss bank account for?

A I never maintained the account.

Q You testified it was your account?

A I testified that I opened it.

THE COURT: How long did you have the account? I think that is all the question is.

THE WITNESS: I think the account was closed a year later.

THE COURT: About a year later?

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q Do you still have one?

THE COURT: Does he still have what?

Q Do you still have a Swiss bank account?

A No, I don't.

Q Did you file a tax return for the year 1969-1970?

A Yes, I did.

Q Did you indicate on that tax return whether in fact you had foreign bank accounts or foreign holdings?

A I don't believe I did.

Q Pardon?

A I don't believe I did.

Q Were you required to under the information on the return?

THE COURT: If you remember that.

THE WITNESS: I don't remember.

Q Tell me, Mr. Frank, during this period that you testified to regarding the making of these contributions on behalf of your clients, did you receive any compensation or any other benefits as a result of this assistance that you gave to charity?

A No, I did not.

THE COURT: This is The Hillel School?

MR. BERGER: To The Hillel School, that's correct.

THE WITNESS: No, I did not.

Q You never received any kind of --

A I received approximately $500 from a broker who had made an improper profit, and when he didn't want to donate that --

Q No orations. Just yes or no. Did you?

A I received $500.

Q Who did you receive the $500 from?

A Arthur Dresner.

Q Did you receive any other compensation?

A No, I did not.

Q You testified that Mr. Levine purportedly gave you the stock of Salem Electronics some time in February, 1970, is that correct?

A I testified he gave it to me, I believe, in March of 1970.

Q In March of 1970. And that you then delivered those certificates to the school, is that correct?

A The one certificate.

Q The one certificate for Salem Electronics, which is Government's Exhibit 8?

A Yes.

Q Did you own an automobile in March of 1970?

A Yes, I did.

Q What kind of automobile?

A I believe a '68 or '69 Cadillac.

Q Did you own a Lincoln Continental?

A I ultimately got one in 1970, yes.

Q When in 1970?

THE COURT: As best as you can recall.

MR. BERGER: To the best of the witness's recollection.

A I think in June or July.

Q Did you receive that car from The Hillel School? Just yes or no.

A Yes.

Q Was it a brand new car?

A Yes.

Q You won that car in a raffle, is that correct, Mr. Frank?

A At the school's annual dinner, yes.

Q That raffle took place in March or April of 1969, is that correct?

A 1970.

Q '70. Excuse me.

Was it March or April of 1970 that you took title to that car?

A No. I won the raffle that day, that time. I didn't get the car until two months later. I refused to accept the Cadillac.

Q But you accepted a Lincoln Continental?

A I wanted a Lincoln.

Q The Hillel School contrived to get you that

prize for the winning?

A No, they did not.

Q Amazing coincidence that.

THE COURT: No, sir, please.

Q Mr. Frank, you looked at Government's Exhibit No. 8, which was the stock certificate?

A Yes, I did.

Q I want you to take another look at this and look at the back.

A Yes.

Q Is that dated?

A No.

Q Did you have any memorandum or any other indication of the exact date you received this certificate?

A No.

Q Is it your testimony that the signature guaranteed was on there at the time you received this certificate?

A Yes.

Q Based on your experience in the industry, is it customary to do this kind of thing without a date?

A Absolutely.

Q That is all right. I wanted to hear you say it.

MR. LITTLEFIELD: I object, your Honor.

THE COURT: That is all right. He has answered

that question, too.

Do you know the exact date that you received this certificate from Mr. Levine?

A You mean the exact date in March of 1970? No, I don't.

Q You do say it is in March of 1970?

A Yes.

Q Could it have been in February of 1970?

A No.

Q Could it have been in December of 1969?

A No.

Q You testified that you prepared this letter. We are back to Government's Exhibit 7 again in March, about March of 1970, is that correct?

A Correct.

Q You testified that you prepared it in your own office, is that correct?

A Yes.

Q Yet in your grand jury testimony --

THE COURT: Beg pardon?

Q Yet in your grand jury testimony, you testified --

THE COURT: Wait, wait a minute until he gets it.

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MR. LITTLEFIELD: What page is this?

MR. BERGER: It is at 45.

Your Honor, I am referring to JJP No. 5, this specific reference.

THE COURT: BJC5. All right.

Q Yet in your grand jury testimony, Mr. Frank, you made a reference to the fact that --

THE COURT: Where are you? I think you had better ask him to answer the question.

MR. BERGER: Your Honor, I am going to offer Mr. Frank's grand jury testimony as a defense exhibit, and have it marked.

(Defendant's Exhibit A for identification marked.)

xx

THE COURT: Any objection?

MR. LITTLEFIELD: Is it being offered in evidence? I think the way to do this is to read it to the witness.

MR. BERGER: I didn't offer it in evidence.

THE COURT: I am going to let you ask questions about it, and I will consider that later on.

Q Now, Mr.Frank, this exhibit represents your testimony --

THE COURT: Let's not worry about what it represents.

If you want to ask him whether he was asked a specific and gave a specific answer, go ahead and ask him that.

Q Mr. Frank, were you asked the question whether the letter provided --

THE COURT: Read the question. I think that would be better. It is on page 5.

Q Question to Mr. Frank addressed to Mr. Frank by the Assistant U.S. Attorney before the grand jury:

"Q That letter was provided to you by Mr. Levine in connection with this gift?

"A Yes. He may even have typed it in my office. It looks like my type of machine."

Now, is it your testimony that Mr. Levine prepared this or that you prepared this?

A My testimony is the same. It was prepared in my office.

Q But your testimony says it looks like --"that he even may have typed it in my office."

A That may very well be true.

Q Thank you, Mr. Frank.

When did you first meet Mr. Kolatch of The Hillel School?

A Approximately June of 1968.

Q You testified that this was in connection with

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your child that was attending the school?

A Yes.

Q And the name of that child was?

A Stacy.

Q Stacy?

THE COURT: Stacy?

THE WITNESS: Yes, your Honor.

Q Did you pay any tuition for that child, or was there any payment made to the school for attendance at the school?

A Yes, there was.

Q Was there a time when the payment -- was there a normal -- was a payment a full payment as requested by the school?

THE COURT: I don't know whether it is full payment or not,but the witness can certainly answer when you entered Stacy in The Hillel School, what did you pay tuition, what did you pay?

THE WITNESS: I paid the full tuition for a student. She had no scholarship, she had no grants.

THE COURT: All right.

Q Did she continue to attend the school?

A Yes, she did.

Q For a period of time?

A Yes.

Q For how long?

A Four years.

Q Pardon?

A Approximately four years.

Q Could you speak up, Mr. Frank, four years?

A Approximately four years.

Q Four years. During the four-year period, did you ever less than the full tuition for her?

A No.

Q You also testified to some criminal acts that you had related to the government in conversations. Did you ever discuss the crime of perjury, lying?

A No.

Q Did you ever discuss with the government a client of yours by the name of Jerry Allen?

THE COURT: Johnny Allen?

MR. BERGER: Jerry.

THE COURT: Jerry Allen?

MR. BERGER: Yes.

A Yes.

Q Was that conversation in connection with the case of the government against you and Mr. Stoller?

A It was in connection with a affidavit I tried

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to get Mr. Allen to sign.

Q All right. Did you have conversations with Mr. Allen about that affidavit?

A Yes.

Q When was this?

A February and March of 1974.

Q That conversation with Mr. Allen, was there a recording made of it?

A On one of them, yes.

Q Was it a tape recording?

A I can say yes.

Q Was that tape recording with your knowledge?

A No.

Q Did the government provide the tape recording to your knowledge?

A Yes.

Q Wasn't it a fact that Mr. Allen was electronically wired and had a conversation with you in connection with this affidavit?

THE COURT: In connection with which affidavit?

MR. BERGER: The affidavit that he has been talking about that he was trying to get from Mr. Allen.

A The government said so, yes.

THE COURT: That is the only basis of your

knowledge?

MR. LITTLEFIELD: When did this occur, so I have an understanding?

THE COURT: February of '74.

THE WITNESS: February or March of '74.

THE COURT: February or March of '74.

MR. LITTLEFIELD: Thank you.

Q In that affidavit, Mr. Frank, did you try or did you tell Mr. Allen to change his testimony and lie before the Court?

A Not in the affidavit, no.

Q Did you tell him at any time?

A No.

Q So it is your testimony that you never told Mr. Allen to lie or otherwise change his testimony before the Court?

A I told Mr. Allen that I wanted him to sign the affidavit. There were some false statements in the affidavit.

THE COURT: You knew they were false?

THE WITNESS: Yes, your Honor.

THE COURT: Okay. You asked him to sign it, anyway?

THE WITNESS: Yes, your Honor.

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THE COURT: All right.

Q So you asked him to perjure himself?

THE COURT: Let's not worry about that. He asked him to sign the affidavit,when you knew there were false statements in it?

THE WITNESS: Yes, your honor.

Q Were you practicing law at that time?

A Yes, I was.

Q Can you characterize that kind of activity as a lawyer relating, stating to someone that they should swear falsely?

THE COURT: I didn't quite understand the question.

Q All right, I will rephrase it. Mr. Frank, does that kind of activity generally constitute subornation of perjury?

A Yes.

THE COURT: Would this be a good time to take a morning recess?

MR. BERGER: Yes, your Honor.

I am continuing on the cross-examination.

THE COURT: I can't hear you.

MR. BERGER: I am pleased to respect the Court's wish.

THE COURT: Let's take our morning recess, ladies and gentlemen. You are excused for a few minutes.

(Recess.)

T5 (Jury present.)

Q If memory serves me, Mr. Frank, we were discussing your testimony about a Jerome Allen affidavit and we had further ascertained that there had been a tape recording without your knowledge of conversations that you hadhad or a conversation, I should say, that you had had with Mr. Allen, a client of yours, and that you testified that you were ready to have him bear false witness on an affidavit.

THE COURT: No, wait a minute. I think what he testified to was that he asked Mr. Allen to sign this affidavit knowing there were some false statements in the affidavit.

Is that correct?

THE WITNESS: That is correct.

THE COURT: All right.

MR. LITTLEFIELD: May I also request Mr. Berger to inform the jury that this question is based on material turned over to him by the government pursuant to law?

THE COURT: I think the jury understands that this material was furnished by the government.

Q Mr. Frank, was the tape in question ever played to you; did you ever hear it?

A Yes.

Q Was it played to you in private by the government?

THE COURT: Put it this way: where did you have the tape played?

THE WITNESS: In an office in this building.

THE COURT: Who was with you?

THE WITNESS: Myself, an attorney representing me and an investigator assigned by the United States Attorney's Office.

MR. BERGER: I will ask the government at this time to produce the physical tape as a defense exhibit.

MR. LITTLEFIELD: The defense has a transcript of it. They listened to the tape last year.

THE COURT: But do you have it?

MR. LITTLEFIELD: We have the tape and the transcript.

THE COURT: If there is any reason for it to be played, I'll take it up later on. You have had an opportunity to hear the tape?

MR. BERGER: Yes.

THE COURT: You have already been furnished with a transcript?

MR. LITTLEFIELD: F-4 and F-5.

MR. BERGER: May I make a statement?

THE COURT: No, ask your questions. I will consider your application to play the tape at a later date. The government says they have it.

MR. BERGER: I have made my motion, your Honor.

THE COURT: All right, go ahead with your questions.

MR. BERGER: I would like to make a further motion with the witness on the witness stand.

THE COURT: No, ask your questions. Don't make any further motions.

BY MR. BERGER:

Q Mr. Frank, to the best of your recollection, do you remember the contents of the tape?

A I know there were discussions with Jerome Allen, myself, and my secretary's voice appeared on it.

Q Would it help you if I played the tape to you to refresh your recollection?

THE COURT: Wait a minute, now, Mr. Berger. Let me see counsel at the side bar.

(At the side bar.)

MR. BERGER: Your Honor, the transcript or a redaction of the tape is insufficient to get the flavor. We have heard the tape.

THE COURT: You can have it played without him.

MR. BERGER: We want it played. I have authority, Brady vs. Maryland.

THE COURT: No. If you think the tape is helpful to you and reach the time, I'll let you put it on, but I'm not going to let you put it on now. If you think it is helpful to you later on on the defense case, all right, but not now.

MR. BERGER: Precisely.

MR. LITTLEFIELD: I would object to it.

MR. BERGER: I obviously would prefer to have the tape played while the witness is on.

THE COURT: What difference does it make?

When was this tape played to the witness, do you remember?

MR. LITTLEFIELD: In 1974. I think he has seen a transcript of it, but I would object to the playing of the tape.

THE COURT: All right, if they bring it up on the defendant's case, if they offer it, I will hear your objection. I only wanted to know if you have it, so if they want it played it can be played.

(In open court.)

BY MR. BERGER:

Q Mr. Frank, there came a time when The Hillel

School acknowledged the receipt of the contribution by Mr. Levine which you had given to them in the form of a stock; is that correct?

A I think they sent a letter of acknowledgment.

Q And the letter that they sent, who was that letter sent to; do you know?

A I don't believe I ever saw it.

THE COURT: You don't believe you ever saw it?

THE WITNESS: No, your Honor.

THE COURT: All right.

Q But the letter had been sent to you?

A It could have been, but I have no recollection whatsoever of it having been sent to me.

Q It was your testimony, Mr. Frank, was it not, that you either didn't see the letter or you never saw the letter or that it might have been mailed to you; is that correct?

THE COURT: I think that is a very complicated question. I think the witness said he doesn't recall whether he ever saw the letter or not.

Is that right?

THE WITNESS: That is right.

THE COURT: Okay.

Q At this time I'm going to read from defense

exhibit earlier marked A, which is the grand jury testimony of this witness.

THE COURT: You are going to ask a question about the grand jury testimony?

MR. BERGER: That is right.

MR. LITTLEFIELD: It is F-45, a government exhibit.

THE COURT: What page is that?

MR. BERGER: Also JJB-5.

THE COURT: All right.

Q "And I see you have turned the page. The next exhibit there is Grand Jury 4-K, so marked on the same date, and" --

MR. LITTLEFIELD: I'm sorry, where are you, Mr. Berger?

All right.

Q I'll read it over again:

"Q And I see you've turned the page. The next exhibit there is Grand Jury Exhibit 4-K, so marked on the same date, and could you identify that letter for us?

"A That is a letter from David Kolatch to Mr. Levine.

"Q Is that letter in response to Mr. Levine's earlier letter that we have identified here as Grand Jury

Exhibit 3-K?

"A Yes, acknowledging the alleged gift of May 26, 1969."

Q So you did see this letter: is that correct?

MR. LITTLEFIELD: Objection, your Honor.

THE COURT: The question is: Do you remember that question being asked and giving that answer, sir?

MR. LITTLEFIELD: May I get the exhibit from the grand jury that was shown, your Honor, if I can find it?

THE COURT: Sure.

MR. LITTLEFIELD: I'm not sure, your Honor, which one of these it is. It is one of these two.

THE COURT: You'll have a chance on redirect.

MR. LITTLEFIELD: In other words, there is a reference in here that in the grand jury Mr. Frank was shown a letter and asked about it and these questions relate to what he was shown in the grand jury.

THE COURT: If he remembers what he was shown he can say so. If he doesn't remember, he can say, "I don't know."

MR. LITTLEFIELD: I believe it is this one here (indicating).

THE COURT: You say this was on page 5?

MR. BERGER: JJB-5.

THE COURT: All right.

MR. LITTLEFIELD: Mr. Berger, is either one of these copies. One is on the letterhead and one is not.

Q Getting back to your testimony about having received $500 as compensation --

MR. LITTLEFIELD: We haven't answered the last question, which is after Mr. Berger read certain grand jury testimony and --

THE COURT: I think the question was: Do you remember that question being asked and did you give that answer to the question?

THE WITNESS: I don't recall the question.

THE COURT: Now you don't recall the question. I think you better ask him that question again and get the answer.

Q In connection with the letter that was sent by the school to Mr. Levine, did you see that letter before it was sent?

THE COURT: Did you see the school letter before it was sent?

THE WITNESS: No.

Q Did you see a copy of it at any time prior to it being shown to you as an exhibit at the grand jury?

A No.

Q Did you receive a copy of that letter and transmit it to Mr. Levine?

A A copy of the letter?

Q Of the letter that was sent.

THE COURT: From The Hillel School.

A No.

MR. BERGER: I am going t read from the testimony.

THE COURT: No, I told you and I repeat again ask him were you asked that question and did you give that answer before the grand jury.

Q "Q Based upon that letter and donation which Mr. Levine gave" --

MR. LITTLEFIELD: Can we be clear on what that letter is? That is Government's Exhibit 7, is that right?

That letter bears what date, May 26, 1969.

THE COURT: I think that is right.

MR. BERGER: I am talking about the acknowledgement letter.

MR. LITTLEFIELD: You start here and you acknowledgement letter.

MR. BERGER: You haven't introduced that yet?

MR. LITTLEFIELD: No.

MR. BERGER: There is confusion here about the letters.

THE COURT: We have to be patient with these things.

Q "Q Now, based upon this letter, the donation which Mr. Levine gave, did you obtain a letter from the

Hillel School to go with Grand Jury Exhibit 3-K" --

THE COURT: Which is Exhibit 7.

MR. BERGER: Which is Exhibit 7.

THE COURT: Go ahead.

Q "A Yes.

"Q I have seen you turn the page and the next exhibit is Government's Exhibit 4-K so marked the same date."

Could you identify that for us?

MR. LITTLEFIELD: That is the letter of acknowledgment sent from the school which is not yet in evidence.

THE COURT: Read the answer.

Q "A That is the letter from David Kolatch to Mr. Levine."

THE COURT: He is asking do you remember being asked these questions and giving those answers.

THE WITNESS: Yes.

THE COURT: All right.

Q Mr. Frank, you testified --

MR. LITTLEFIELD: Have we completed with this?

THE COURT: Let him ask a question.

Sit down, Mr. Littlefield.

MR. LITTLEFIELD: Is he arguing this is incon-

sistent, your Honor?

THE COURT: Wait a minute, relax.

He asked whether he made these answers in the grand jury and he siad yes.

MR. LITTLEFIELD: If he is contending they are inconsistent --

THE COURT: He asked him a question.

What is your next question.

Q Mr. Frank, you testified that you received $500 as compensation. Let us explore that for a minute.

Was the $500 that you received in compensation which arose from one of your charitable contributions related to a stock called Berkley Bio-Engineering?

A Yes, sir.

Q Did you own any shares of this company?

A Yes.

Q Did you own them by purchase?

THE COURT: The question is how did you get the stock?

Q Did you buy the stock?

A Yes.

THE COURT: How did you get this stock?

THE WITNESS: I bought it in the open market.

THE COURT: All right.

Q At the time you bought it were you representing a party by the name of Norton & Company or William Norton?

A Yes.

Q Did you buy these stocks in your own name or through any other name?

A It was bought for my account.

Q Your account? Was your account in your name, Mr. Frank?

A It was my account at IBT.

Q Is OBT known as International Bank & Trust Company located in the Cayman Islands?

A Yes.

MR. LITTLEFIELD: May Mr. Berger make a statement that these questions are based on material furnished by the Government pursuant to law?

THE COURT: Yes, that is it, sure.

MR. BERGER: If your Honor please --

THE COURT: Stop the discussion here.

MR. BERGER: I will concede it.

THE COURT: All right.

Q Was this purchase of stock made here in the United States or was it made in Canada?

A Made in Canada.

Q Through a Canadian brokerage house?

A Yes.

Q For this account in the Cayman Islands?

A Yes.

Q That you had an interest in?

A For the account of IBT in the Cayman Islands.

Q But you had an interest in it, was it in your name or your numbered account?

A It was my numbered account at IBT.

Q But a numbered account?

A Yes.

MR. BERGER: I would ask --

THE COURT: Ask the questions, please.

Q About when did this occur, Mr. Frank, about October 1972 would you say?

A Which occur?

Q The transaction we were just talking about, the purchase of Berkley Bio-Engineering stock?

A I bought Berkley stock when it was originally underwritten back in 1971.

THE COURT: 1971?

THE WITNESS: Yes.

Q Did you engage in any transaction of purchase

for your numbered account in the Cayman Islands on about October 1972?

A I don't recall.

THE COURT: You don't recall the daete?

THE WITNESS: I had several transaction in that security, your Honor.

Q Is it possible that was the date it might have occurred?

A It is possible.

Q Is it not a fact that you also purchased these shares in your numbered account in conjunction with Mr. Norton, your client, who also bought shares in the numbered account?

A It was not in conjunction with.

Q Did Mr. Norton also buy shares?

THE COURT: If you recall.

A He bought stock, your Honor, yes.

Q Did there come a time when You traveled to Montreal. Canada and received from International Bank & Trust Company, the Canadian branch, 5000 shares of a company called Design Craft and 19,000 shares of Berkley Bio-Engineering?

A It was 19,000-plus, yes.

Q Do you remember how many shares of Berkley Bio-

Engineering you bought for yourself?

A I believe 2750.

Q But you received --

A That included stock splits.

Q But you received 19,975 shares?

A Yes, sir.

Q Did some of those belong to your client, Mr. Norton?

A Yes.

Q Did you tell Mr. Norton that you had his shares, did you advise him?

A No.

Q So you took them?

A Yes.

Q Did there come a time when you sold them?

A A portion of the Berkley Bio.

Q Did you sell them in a brokerage transaction?

THE COURT: I don't know what a brokerage transaction is.

Q Did you sell them through a broker?

THE COURT: Do you remember?

THE WITNESS: Yes, your Honor.

THE COURT: Okay, he did.

Q Was the name of the broker Dressner & Company?

A That was one of the brokers.

Q Did you sell certain of the shares of Berkley Bio through Dressner & Company?

A I sold shares of Berkley through Dressner, yes, sir.

Q Did you sell those shares in your own name or any other name?

A No, I did not sell them in my own name.

Q Who is Hubert Ducharme, do you know the name?

A Yes, I do. A Canadian and Panamanian attorney.

Q Have you ever used his name as your own?

A I used Mr. Ducharme as my nominee.

Q Have you ever made sales of stock through the account of Ducharme?

A That was the nominee account I was referring to.

Q Did you receive the funds from the sale?

A Yes, I did.

Q Did you pocket those funds?

A I kept the funds.

Q We are talking about approximately $10,000, is that correct?

A I don't recall the amount, sir.

Q The funds in question that you received, or the moneys that you received from this sale, did you ever report this on your income tax return?

A Yes, I did.

Q All of it?

A I reported $8500 as miscellaneous income for that year.

Q So you are saying that you did not report $1500?

A I don't believe the proceeds were $10,000.

Q Did you make sales of this stock to any brokerage house?

A Yes, I did.

Q Did you make it through John Maher Associates?

A Yes, I did.

Q Do you remember what the shares were selling for in the period that you sold them?

A Which period?

Q That you sold them in 1972 and 1973 through 1975?

A In 1 '5 approximately one dollar.

I would say in 1974, $2 or $3 a share.

Q You said you had approximately 19,000 shares, is that correct?

A Yes, sir.

Q So that if you sold at the figure you say in 1974, a dollar, at best it would be $19,000, is that correct?

A I don't understand the question.

Q You just said you sold the shares at a dollar?

A The shares I sold in 1975 were a dollar. Some shares two and a half or $3.

Q How many shares do you recollect selling for a dollar?

THE COURT: If you know?

A About 3000.

Q Going back to Dressner & Company, did you open an account there?

A I have had an account there many, many years.

Q Did you open an account under a nominee name at Dressner & Company?

A I already testified that is Hubert Ducharme.

Q Ducharme's account was your account that you used as nominee?

A Yes.

Q You sold stock to that account, the Berkley Bio-Engineering stock?

A Yes.

Q Were there any contributions made through you of Berkley Bio-Engineering to the Hillel School?

A Yes.

Q When you sold your Berkley stock through your nominee did you give Mr. Dressner or whoever it was any instructions of the type of sale it should be?

A Which stock are you referring to, Mr. Berger?

Q The Berkley Bio-Engineering?

A There were several sales through Dressner.

Q Did you ever sell any stock short?

A No.

Q Did you ever advise Mr. Dressner through your Ducharme account to sell any Bio-Engineering stock short?

A I advised Mr. Dressner to sell Berkley short but not through the Ducharme account.

Q But you did advise him though?

A Yes.

Q Did he in fact sell it short?

A Yes.

Q Could you tell the jury what is meant by short if they do not know?

A A short sale by a broker is when he sells securities which he does not own or does not have in

possession at the time.

Q In order to complete the short transaction did stock have to be delivered to Dressner by you for this transaction?

A There was a donation of a thousand shares of Bio stock to the Hillel School.

Q Just answer the question, please, Mr. Frank?

THE COURT: I don't think that question is so readily answered yes or no. You started to say something?

A Yes. The School got a donation of a thousand shares which it did not have in its possession at the time. I told Mr. Dressner to sell a thousand shares at the market and I protected him against any loss, that the stock would be delivered and I was guaranteeing to him delivery. That is a thousand shares which Mr. Dressner sold.

He did sell a thousand shares in the market which was in actuality a short sale because at the time he did not have the stock.

He sold that stock as principal for his own brokerage account, yes, sir.

Q You remember that quite precisely?

A Yes.

Q You testified earlier that in your explanation to the jury that this is a sale of stock that was not owned so that some time when the sale was completed you would have to deliver stock, is that correct?

A The broker has to deliver his sale, yes.

Q You testified that you were protecting that broker, is that correct?

A Yes.

THE COURT: He guaranteed delivery of the stock, he said that.

Q Didn't you in fact deliver the stock to the broker?

A The stock was delivered to the Hillel School from whom Dressner bought the thousand shares.

Q Dressner bought the thousand shares, okay, but it was delivered from the Hillel School to Dressner through your nominee account?

A No, not through the nominee account. Through a donation that had been made of a thousand shares.

Q Did you receive any compensation for arranging this delivery of the Hillel stock to Dressner?

A Mr. Dressner bought the stock at eight and a half --

Q Just yes or no?

A I can't answer it that way.

THE COURT: You can answer the question did you receive any compensation out of the transaction. If you answer yes you can tell us the form of compensation.

A Yes, I received $500 from Mr. Dressner.

Q To the best of your recollection, you testified that you had many clients that you had many clients that contributed stock to the Hillel School?

THE COURT: I don't know about the word many.

Q You had other clients that made contributions to the Hillel School?

A Yes.

Q How many would you say, Mr. Frank, roughly?

A About seven or eight including Mr. Levine.

Q Did you have any clients that made contributions to other schools besides the Hillel School or other organizations?

A Yes.

Q The Hillel School is located where?

A Lawrence.

THE COURT: Lawrence, Long Island?

THE WITNESS: Yes, sir.

Q Where were some of the other charitable organiza-

tions located that got contributions from other clients?

A The National Cardiac Hospital in Miami, Florida.

Q Any in Ohio to your knowledge?

THE COURT: If you recall.

A Do you mean me?

Q Through you?

A No.

Q These contributions were made over what periods, starting when?

THE COURT: His client's contributions to these organizations?

MR. BERGER: Precisely.

THE COURT: All right.

During what period of time?

A From 1970 into 1973.

Q Do you know or do you recollect what the total amount of these contributions were?

A I don't know what you mean by total amount.

THE COURT: What he is asking you is your clients made gifts through the period between 1970 and 1973 and he wants th know the figure as to what the total amount of these gifts were if you know.

A I never computed it, your Honor.

Q If you knew the price of the Bil-Engineering stock for your own contribution --

THE COURT: No commentary, ask a question.

Q In your dealings with Mr. Kolatch who you testified was the administrator of the Hillel School, was Mr. Levine present at any time at any of these meetings?

A No.

Q To your knowledge did Mr. Levine communicate directly with Mr. Kolatch?

A I know of no such communications.

Q Prior to your relating to Mr. Kolatch the transaction with Mr. Levine, did he know Mr. Levine to your knowledge?

A No.

Q The contribution of Mr. Levine's Salem stock to Hillel, was there a conversation with Mr. Kolatch in connection with such a contribution?

A Between whom?

Q Between you and Mr. Kolatch?

A Yes.

Q About when was this?

A March of 1970.

Q Did you at that time know about the Salem

Electronics and the number of shares involved?

A In the conversation where I gave him the information, that is when I knew about it.

Q Mr. Kolatch agreed to take the shares of Salem Electronics belonging to Mr. Levine and backdate them by letter, is that correct?

A Yes.

Q You had that conversation with Mr. Kolatch, is tht correct?

THE COURT: He said that. Let's not keep repeating all these things.

Q Did you ever represent the Hillel School as a lawyer?

A No.

Q Did you ever write any opinion letters for the Hillel School for any of their stock sales?

A No.

Q Do you know a brokerage house called Continental Securities?

A Only from the name on the back of the certificate which is an exhibit in this case.

Q Other than that you have no knowledge?

A No.

Q In your relationship with Mr. Levine you testified

that you were good friends, in addition to having a legal attorney-client relationship, is that correct?

A Yes.

Q You testified that he had his own brokerage house and that you engaged in various activities with him such as mergers and taking companies public and things of that sort generally, is that correct?

A General representation, yes.

Q Were there occasions during the period of your representation of Mr. Levine that he left papers signed in blank with you?

A I don't recall any, sir.

Q I'm sorry?

A I don't recall any.

(Continued on next page.)

T7

Q Is there a possibility that he had blank sheets of paper signed by him for you?

THE COURT: That you recall.

A I don't recall at all.

Q Is there a possibility?

THE COURT: No, I sustain an objection.

MR. BERGER: The witness --

THE COURT: He has no recollection.

Q Could Mr. Levine have left a blank sheet of paper with you on which you typed Government's Exhibit 7 which constitutes the transmittal to the charity, The Hillel School?

A I don't understand what you mean by the words "blank sheet of paper."

THE COURT: The question is whether that letter, Exhibit 7, was written on a piece of paper on which Mr. Levine had signed his name and you or somebody else wrote the letter. I think that is the question.

THE WITNESS: No, it could not have been.

Q Had you been promised any compensation by the Internal Revenue Service as a result of any recovery of funds made coming out of the various indictments in these school charge matters?

A No.

Q Do you anticipate receiving any compensation of this sort?

A No.

MR. BERGER: I have no further questions at this time, your Honor.

THE COURT: Any questions?

MR. BERGER: If your Honor please, I said I had no further questions, but something was called to my attention.

THE COURT: Go ahead.

Q Mr. Frank, getting back to Dresner & Dresner, the brokerage house, do you recollect having a conversation with Mr. Dresner on or about May, 1975, relating to the compensation that you received?

A No.

MR. BERGER: If the Court please, at this time I am going to --

THE COURT: You may do that later. His answer is no.

Is that your question?

MR. BERGER: Well --

THE COURT: Please, now.

Any questions now on redirect?

MR. BERGER: I have no further questions.

mcp3 Frank

THE COURT: All right.

Mr. Littlefield?

MR. LITTLEFIELD: I have no further questions.

THE COURT: No further questions. All right. I take it you are excused.

(Witness excused.)

MR. LITTLEFIELD: The government calls Mr. Kolatch.

D A V I D K O L A T C H, called as a witness on behalf of the government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q Mr. Kolatch, please keep your voice up so we can hear it throughout the courtroom.

A Yes, sir.

Q Where were you born and when?

A I was born in Brooklyn, New York, in 1935.

Q What is your present job?

A I'm the administrator of The Hillel School.

Q When did you start working at The Hillel School?

A In December of 1963.

THE COURT: What are your duties as administrator of The Hillel School?

THE WITNESS: I run the business end of the school, the handling of its physical plant, its finances, and things of that nature.

THE COURT: All right.

Q When did you first begin work at The Hillel School?

A I originally started in December of 1963 as director of a summer program and in November of 1964 I became the administrator of the school full-time.

Q Can you tell us something about the school, what kind of school it is?

A It is a parochial day school. Originally, from its inception it was a kindergarten through eighth grade school. In 1970 we added a high school to it.

Q You didn't have a high school before that?

A No, the high school started in 1970.

Q It started in the Fall of 1970?

A September of 1970.

Q That is when you accepted the students?

A Yes. The actual discussions about the formation of the school started in 1968 and in 1969, actually, but it was formally, the board of trustees actually formally accepted the concept in December of 1969.

Q How many students are there in each of these

parts of the school?

A There is about 390 in the elementary school, that is, kindergarten and through eighth grade, and there is 115 in the high school, that is, nine through eleven. It is a three-year high school.

Q There is a nursery and day school also; is that right?

A In addition to that we run an all-year-round nursery school, which has about 70. We run two summer programs, one a day camp type of program in our premises which has about close to 700 youngsters, and we also have a sleepaway camp in the swan lake area which has about 400 youngsters.

Q What are your duties at the school as administrator?

A I'm in charge of the entire physical plant, the registration of students, the finances of the school, meeting its daily obligations, all purchases, and things of that nature related to the operations of the school. I am not involved in the education of the school.

Q Are you in charge of fund raising?

A Yes, I am in charge of fund raising, all types of special fund raising events that we may run and things of that nature, and annual dinners.

Q What is the financial situation of the school? Do you have an endowment?

A No, it is not an endowed school. The financial situation is very poor.

Q Has it been that way since you started working there?

A From its inception, actually. The school plant, which is very nice, the physical plant was built with no dollars and the school is constantly in a position of having to borrow, having to fund raise constantly.

Q Directing your attention to the Fall of 1969, were you considering at that point a high school, building a high school?

A Yes, we were considering starting a high school in the Fall of 1969.

Q Did there come a time in December of 1969 that the board of directors resolved to attempt to form a high school and build one?

A Yes.

Q When was that?

A As I indicated, discussions about the high school had been discussed for quite a while. In December the Board formally accepted the concept and passed a resolution to start a Hillel High School.

Q Now, I show you what has been marked Government's Exhibit 10 for identification and ask you what that is, the two documents here?

A The first one are the minutes of the board of trustees' meeting dated December 23, 1969, and in these minutes --

Q What is the second one?

A The second is the minutes of the board of trustees dated January 25, 1970.

Q Does that refresh your recollection as to the status of the school as of the first meeting and as of the second meeting?

A Yes, it does.

Q What was the status of the school at that time?

A In 1969, December, there was the resolution discussed as to the start of The Hillel High School with two provisos: one, that sufficient commitments for enrollment of students are received and, two, that the costs are carefully weighed, and that the committee, you know, the board feels that financially they can get involved.

Q What about the second meeting of the board of trustees?

A The second meeting of the trustees establishes tuition fees for the high school and so on. It

also authorizes the executive board to enter into a contract with the principal of the high school.

Q What is the date on that?

A That is dated January 25, 1970.

Q Do you know Martin Frank?

A Yes, I do.

Q How do you know him?

A He was a parent of the Hillel School. His daughter attended the school. She entered the second grade as a transfer student in September of 1968, I believe.

Q What was his daughter's name?

A Stacy.

Q Did there come a time when you discussed contributions to the school with Mr. Frank?

A Yes, there was. That was in the winter of 1969-1970. I actually sat down with him and discussed contributions to the school at that time.

Q Did you also have any discussion with Mrs. Frank about contributions?

A Actually prior to my speaking with Mr. Frank I had seen Mrs. Frank around the school and I got to know her and speak to her about getting her husband to help us out and make contributions. Part of my job was to speak to various parents of the school and try to solicit con-

tributions. And there came a time when Mrs. Frank indicated to me that Mr. Frank would call me and sit down and speak with me, and that that was in, I believe, December or January, the Winter of 1969-1970.

Q Did Mr. Frank come into the school?

A Yes, Mr. Frank did come in to see me on a Sunday morning to discuss means of making some time of contribution to the school.

Q Where did he come to see you?

A At my office at the school.

Q How do you know it was a Sunday morning?

A The reason why I know it was a Sunday morning was because during the week he was unable to see me and he had called. He asked me if he could come in on a Sunday. I said, "Fine."

I do work on Sunday morning. It gives me an opportunity to meet with parents who normally don't have time during the week and I have to be available at the time, the particular time that they are available, so I recall vividly that it was a Sunday morning.

Q Did Mr. Frank discuss with you making contributions with the school receiving contributions through business associates of his?

A At that time Mr. Frank indicated that he was

willing to help the school out. He was in a position to help the school out and through himself and via some of his business associates he may be able to help the school out.

Q Was anything else said at the first meeting?

A Basically that was it. You know, after the first meeting he said that he would get back to me; that he would again try to help us out as much as possible.

Q Did there come a time when he came a second time?

A Yes, a few weeks later, actually, he did come back to meet with me, and at that time --

THE COURT: When would that be, about?

THE WITNESS: To the best of my recollection, it would be some time in early February and possibly the last week in January.

THE COURT: 1970?

THE WITNESS: Yes, 1970.

At that point I recall him coming in. Again it was Sunday morning. He came in and he had a gray envelope with him and in that envelope was several stocks. I recall one particular stock called Prevor-Mayerson.

Q What else was included in that envelope?

A Also included in that envelope were stock powers as well as letters from the individuals who were gifting

the stocks to the school.

Q Do you remember who at least one of these individuals were?

A I remember one to be a Jesse Kreiger.

Q Was there a letter from Mr. Kreiger?

A I recall that there was a letter from Mr. Kreiger as well as in that same packet a cancelled check showing that he had paid for the stock, as well as a brokerage house certificate showing that the stock was sold to him.

Q What else happened at that meeting?

A At that point Mr. Frank called my attention to what was in there. He indicated to me that it was around $10,000 or $12,000 worth of stocks in there. The value of the package was around $10,000 or $12,000. He also said to me that he would like me to acknowledge the gifts to the various individuals, you know, with reference to the stocks that were in there, and he pointed outto me that I should acknowledge them in relationship to the date that was on the letter.

Q Was the date on that letter from Mr. Kreiger the actual date that the stock was actually delivered to you?

A No, it was not. The date was considerably before that time.

Q What do you mean by "considerably"?

A It may have been close to a year earlier.

Q By his asking you to write an acknowledgment letter based on that date, what do you mean by that?

A Basically he was asking me to backdate the letter, to backdate the thank-you.

THE COURT: The thank-you would come a few days after the date of the gift put on the gift letter; is that right?

THE WITNESS: That is correct. In other words, he asked me -- well, if we had a letter here I'd be able to see.

Q Maybe I can show you this which was marked as Government's Exhibit 9. I show you what has been marked as Government's Exhibit 9 for identification, Mr. Kolatch. I show you first a letter dated January 30, 1969, and ask you if you recognize that?

A Yes, this was the letter from Mr. Kreiger gifting the Prevor-Mayerson stock to us and this letter is dated January 30, 1969.

Q I show you also part of Exhibit 9 for identificaton, and that is The Hillel School letter, and ask you if you recognize that?

A Yes, this is my letter to Mr. Kreiger. It

bears my signature.

Q What is the date on that?

A That is dated February 14, 1969. This letter was done in 1970.

Q I show you what has been marked as Government's Exhibit 9 and ask you if by looking at these documents, including this letter, whether you are able to tell exactly when it was that this Kreiger-Prevor-Maverson stock was delivered to you by Mr. Frank?

A The first letter, which is a letter from me to -- it is a copy of a letter from me to Mr. Dick Grey -- it is dated February 26, 1970, and it --

THE COURT: I don't think that is the question. The question was: can you tell from looking at those what date you received the stock.

THE WITNESS: Yes.

THE COURT: What is that date?

THE WITNESS: I would say that I received the stock a few days prior to the date of this letter, prior to February 26, 1970. The stocks, these particular stocks --

THE COURT: You received the stocks a few days before February 26, 1970?

THE WITNESS: Yes, definitely.

Q What is this letter dated February 26, 1970?

A This is a letter, as I said, from me to Mr. Grey of Dopler, Grey & Company.

Q What is Dopler, Grey & Company?

A It was a brokerage house to which I sent the 3000 shares of Prevor-Mayerson to him for sale. They were marketable stocks. They were not restricted.

Q So the Prevor-Mayerson stock which you received was not restricted stock, it was free stock?

A Yes, it was free stock, and subsequently, right after this period, we started selling them and the balance of this material that you have over here basically are the tickets, you know, in reference to the sale of these stocks starting in March, March 2, I see here, and going through, all the way up to 1971, actually. It started March 2, 1970. These are just basically copies of, you know, our account. This is just our account with Dopler, Grey in terms of the sales of the Prevor-Mayerson stock.

Q How long did you hold the Prevor-Mayerson stock at the most before you sent it to Dopler, Grey to have it sold so that the school could get the money from the sale of it?

A To the best of my recollection, I would say at the most a week -- possibly a few days more than that, but as soon as I was able to get rid of it, you know, I did.

Q Prior to your receipt of the Prevor-Mayerson stock, had there been any other stock gifts through Mr. Frank to the school?

A No.

Q That was the first?

A This was in the first packet that he brought me.

MR. LITTLEFIELD: The government offers at this point the packet of material from Dopler, Grey & Company as to the Prevor-Mayerson stock and the letter to Mr. Grey.

THE COURT: Why not show counsel the documents first.

There being no objection, they are received.

xx (Government's Exhibit 9 received in evidence.)

Q After you got the Prevor-Mayerson stock from Mr. Frank, did he bring additional stock to you for contribution to the school?

A Yes, he did. He brought -- there were several other occasions, many other occasions when he brought stocks to the school.

Q Was one of these stocks Salem Electronics, Inc.?

A Yes.

Q Tell the Court and jury, please, what happened after the Salem Electronics stock was brought to the

school?

A The difference between the Salem Elecronics stock and some of the other stocks was that this was the stock which was a restricted stock, so it was not marketable, but pretty much the same procedure was followed.

Q Explain what the procedure was.

A Mr. Frank brought me the stock. It was accompanied by a letter from the donor.

Q I show you what have been marked as Government's Exhibits 7 and 8, and ask you if you recognize each of them?

A Exhibit 7 is a letter to The Hillel School from Mr. Jack Levine, which is gifting certificate No. 732 for 16,666 shares of Salem Electronics, Inc.

Q How did you get that letter?

A This was given to me with the stock of Salem Electronics from Mr. Frank.

Q What is Government's Exhibit 8?

A It is the actual certificate which was given to me accompanying this letter by Mr. Frank of Salem Electroncis.

Q Did you know Mr. Levine at that time?

A No.

Q As far as you know, had he had any connection with the school?

A Not to my knowledge.

Q Do you know whether you ever met Mr. Levine?

A Not to my knowledge.

Q Referring to Government's Exhibit 8, the stock certificate, when you received it was it in the same form as it is now?

A Yes, it is the actual stock. It had the stock power on the back plus signed signature guarantee, so that all the stock that was delivered to us either had stock powers accompanying it or the actual stock itself signed.

Q Why was that?

A So that we could market the stock. Otherwise it had no value to us unless we could do something with it, except that this stock was restricted stock and we were not able to sell this immediately.

Q Did you keep it in possession of the school?

A I held it, actually, in the possession of my own office for a period of time. I ultimately tried to do something with it, but the value of the stock was almost nil. We did not do anything with the stock.

Q Did you hold that stock certificate, either you or your attorneys, up until it was turned over to the

government, just before the trial?

A Up until last week, until the time that it was turned over to the government.

Q Did you ever give it back to Mr. Frank?

A No.

Q When Mr. Frank brought you the stock certificate and the letter, what were the instructions with respect to what you would do upon receipt of the stock and the letter?

A It was the same instructions that I had with any other gift that Mr. Frank had brought to me with stocks, and that was to prepare a letter of thanks to the individual, again backdating the letter to correspond to the gift letter, and in this case my letter of thanks was somewhere around May 26 or thereabouts of 1969.

THE COURT: Why don't we take our luncheon recess at this time, ladies and gentlemen, until a quarter of two.

Please remember not to discuss this case in the meantime with anyone. We will resume at a quarter to two. Thank you very much.

(The jury left the courtroom.)

MR. LITTLEFIELD: Might we hear argument on the offer of the other years?

THE COURT: Yes. I have considered that and

in view of Mr. Frank's testimony about the carry-forward I will receive Exhibits 2 through 6. Is that it?

MR. LITTLEFIELD: Yes, Government's Exhibits 2 through 6.

THE COURT: 2 through 6 being the tax returns for the other years. I will receive them as official records, now, with Mr. Frank's testimony about the carry-forward.

MR. KATZ: They are not mentioned in the indictment.

THE COURT: I know, but I will receive them.

(Luncheon recess to 1.45 p.m.)

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AFTERNOON SESSION

(1.45 p.m.)

D A V I D K O L A T C H , resumed.

DIRECT EXAMINATION (Continued)

BY MR. LITTLEFIELD:

Q Mr. Kolatch, when we took the luncheon recess you just identified Government's Exhibits 7 and 8 and you had testified that after you received this stock cer tifiecate and the letter of transmittal from Mr. Frank, what did you do next?

A The next thing I did is acknowledgment of the particular gift.

As I indicated before, I directed my secretary to send an acknowledgment to the person involved, Mr. Levine.

Q Did you tell her what date to put on it?

A I told her to date it as close to the date that the gift was made as possible.

Q I show you what has been marked as Government's Exhibits 1-A and 1-B.

MR. LITTLEFIELD: 1-A, your Honor, comes from Government's Exhibit 1 which is the tax return of Jack and Constance Levine offered in evidence yesterday as Government's Exhibit 1.

Q Looking at 1-A and B could you describe what they are?

A 1-A is a photostat of the copy of a letter which I sent to Mr. Levine.

Exhibit 1-B is a copy which comes from my files of the same letter.

Q By copy what do you --

A 1-A is a photostat of an original. The reason why I am able to determine that is that it carries the school stationery as well as the names of the officers and trustees of the school B.

1-B is simply a carbon which carries no markings whatsoever.

Q It is not on letterhead paper?

A It is not on letterhead paper

Q You say that that is a letter that you directed --

A Directed my secretary, in this case Miss Heirson to send to Mr. Levine. Furthermore, directed her to use the date which was May 28, 1969, which is close to May 26, 1969.

Q You told her what date to put on it?

A Yes.

Q How do you know it was Grace Heirson who typed this letter?

A Her initials are on the bottom left-hand corner.

MR. LITTLEFIELD: The Government offers 1-B, your Honor. 1-A is part of the tax return.

MR. BERGER: This is unsigned.

THE COURT: He said it was an office copy.

MR. BERGER: We object to this on the ground that there is no indication that this was done in his office.

THE COURT: Where did you get the copy of this letter?

THE WITNESS: This comes from my files which I turned over to the --

THE COURT: You got it and turned it over to the Government?

THE WITNESS: Yes.

THE COURT: I will receive it. You got it out of the files?

THE WITNESS: Yes.

THE COURT: All right.

(Government's Exhibit 1-B for identification was received in evidence.

MR. LITTLEFIELD: Will you mark 1-A as received?

THE COURT: 1-A is already in Exhibit 1.

MR. LITTLEFIELD: That is right.

THE COURT: I don't think we need it twice.

MR. LITTLEFIELD: May I show these to the jury as we proceed?

THE COURT: Surely.

(Handed to jury.)

Q You say those letters were backdated to correspond with the --

THE COURT: He said that it was a few days after the date that you gave. A few days after the --

THE WITNESS: After the 26th date. That is dated May 28 and this is 26th.

Q That is approximately how much backdated from when it actually occurred?

A To the best of my recollection this particular gift was given to me some time between February of 1970 and September of 1970.

Q How do you know September?

A Miss Heirson was no longer in my employ after September 1970.

Q The February, how do you know the earliest it could have been was some time between February and September?

A Because the first gift which I received through Mr. Frank was received in February of 1970 and so it is on that basis that I establish this.

Q This is the basis on which you establish --

A The only other basis I can establish the total package starting was that the board minutes which I looked at before did not discuss the gift, the Frank gift to the school.

Inasmuch as this was a stipulation provided for the formation of the high school regarding finances, if that gift were to be made by then, it would be in the minutes.

Q What si the date of the minutes?

A December 23rd was the date of one set of minutes and I believe January 25th to the best of my recollection in 1970.

Exhibit No. 10 would be December 23rd, 1969 in which the particular --

Q Was there another set of minutes?

A There is another set attached dated January 25, 1970.

Q It would be after the second minutes?

A To the best of my recollection after the second minutes this would have occurred. That is why

I am stipulating February or the end of January.

Q After the letter was prepared you say it was sent to Mr. Levine, is that right?

A Yes.

Q At the address on the letter?

A To the best of my recollection, yes.

Q Who was the president of the Hillel School in May of 1969 if you recall?

A In May of 1969 Mr. Jerome Alter was president of the Hillel School.

MR. LITTLEFIELD: I will have to ask some more questions about 1-A so may I ask the jury to return it back to me.

THE COURT: All right.

Q What does the stationery say was the president of the school?

A This stationery says Max Wagner was president of the school.

Q When did Max Wagner become president of the school?

A He was elected president of the school in June of 1969.

Q I show you what has been marked as Government's Exhibits 11, 12 and 13 as of today's date and ask you if

can identify them?

A Exhibit No. 11 is dated May 13, 1968 and is a notice of general membership meeting of the Hillel School which was to be held on June 12, 1968 for the purpose of electing officers and trustees of the Hillel School.

It was accompanied by a slate of officers, the slate nominated for that particular year.

Q For the school year?

A The school year. The election takes place --

Q What school year does Government's Exhibit 11 relate to?

A The 1968-69 school year.

MR. LITTLEFIELD: The Government offers 11 and will offer 12 and 13 as well.

THE COURT: Let's identify 12 and 13 also.

Q What is Government's Exhibit 12?

A Exhibit No. 12 is a meeting notice of general membership meeting of the Hillel School to take place on June 17, 1969. This letter is dated May 7, 1969.

Attached to it is a copy of the slate of officers that were nominated for the 1969-1970 year.

Q I show you Government's Exhibit 13 for identification and ask if you can identify that?

A Yes.

Exhibit No. 13 is an invitation to the installation of officers of the Hillel School of the Hillel School itself and its Parents-Teachers Association which was to take place on Saturday, the 6th of September, 1969.

Q 1969?

A Correct.

Q So that Government's Exhibit 13, which is the invitation to the installation, refers to the slate of officers who were going to be elected in June 17, 1969?

A That is correct.

Q In fact the slate is listed on this invitation to the installation?

A That is correct.

MR. LITTLEFIELD: The Government offers these three exhibits.

THE COURT: Show them to counsel.

MR. BERGER: No objection.

THE COURT: Thank you, they are received.

(Government's Exhibits 11, 12 and 13 for identification were received in evidence.)

Q Looking at these Exhibits 11, 12 and 13, plus

1-A, the letter, you stated that in May of 1969 the president was Mr. Alter, is that correct?

A That is correct.

Q Looking at the slate of officers which is Government's Exhibit 11 for the 1968-1969 year, it says president, Jerome J. Alter?

A That is correct.

Q The stationery on which Government's Exhibit 1-A is written says president, Max Wagner, is that right?

A That is correct.

Q Along witha number of the -- of the whole slate?

A Yes.

Q Including three honorary presidents?

A That is correct.

Q For the school year 1968-1969 only two honorary presidents appear, Mr. Levin and A ler?

A Yes.

Q When did this slate of officers on this stationery in Government's Exhibit 1-A, where Max Wagner is president and three honorary presidents -- is it true they were elected on June 17, 1969?

MR. BERGER: Objection.

THE COURT: Sustained as to form.

When were they elected?

A On June 17, 1969.

Q How do you know that this is a slate elected on this day?

A Well, No. 1, you have this particular correspondence which announces the slate.

No. 2, you have the accompanying slate; and

No. 3, you have the invitation to the installation of officers so this is what sets up that particular group of officers for this school year.

(Continued on next page.)

Q Now, when did you start using this stationery listing Mr. Wagner as the president and the three honorary presidents?

A To the best of my recollection not before the installation of officers with that stationery have been used. It is very possible that perhaps in late August it may have been, you know, ordered. That would be --

THE COURT: August of what year?

THE WITNESS: Of 1969, but not before then.

Q So that the stationery on which this letter is written, referring to Government's Exhibit 1-A, was not used by the school on May 28?

MR. BERGER: Objection to the form of the question.

THE COURT: Yes, objection sustained. It was not used by the school prior to whatever that date was?

THE WITNESS: This was not printed at that time.

THE COURT: All right.

MR. LITTLEFIELD: May I pass 11, 12 and 13 to the jury, your Honor?

THE COURT: Okay.

Q Did there come a time in about March 1970 when

you had an event at the school?

A Yes.

MR. LITTLEFIELD: Please mark this as Government's Exhibit 14 for identification.

(Government's Exhibit 14 was marked for identification.)

xx Q I show you what has been marked as Government's Exhibit 14 for identification and ask you if you can identify that?

A Yes, this is a Hillel School newsletter which announced the annual dinner of the Hillel School honoring Dr. and Mrs. Adler.

Q Was there a raffle conducted at that dinner? Did you have a raffle at each of your annual dinners and in 1970 as well?

A Yes, there was a raffle.

Q How does that work?

A There were 100 raffle tickets sold. They are $100 a ticket. The winner of the raffle would win a Lincoln Continental.

Q How would it work?

A What happens is that after the raffles were sold -- we sell them also before the dinner -- there is a drum containing Ping-Pong balls and they are numbered

corresponding to the raffled gold.

Q Were the names of the people who bought the tickets for the raffles written down anywhere?

A Yes. In addition to that there is a large oak tag which carries every single number.

Q A large what?

A A large oak tag which lists -- which bears a large list carrying every number from 1 to 100 and on that, next to each number is the name of the purchaser of the ticket so that for every Ping-Pong ball in this drum there is a name corresponding to a number on that oak tag list.

Q And is the drawing done during the dinner?

A The drawing is done at the dinner itself, yes.

Q Who does the drawing?

A We usually ask somebody from the audience.

THE COURT: I take it this is a particular dinner. Were you there at that dinner?

THE WITNESS: Yes, I was.

THE COURT: Do you remember who drew the number at that dinner?

THE WITNESS: To the best of my recollection it was the daughter of the guests of honor, which would

have been Alicia Adler.

Q How old was the daughter of the Adlers?

A She is now 16, so subtract down. I guess she must have been 11.

Q Did she reach into the drum?

A The drum was turned several times, the top was opened and she reached in and she took out a Ping-Pong ball. To the best of my recollection, the third ball picked was the winning number.

Q Do you advise the people at the dinner of that?

THE COURT: The third ball picked was the winning number?

THE WITNESS: That is correct.

THE COURT: Is that the rule of the competition?

THE WITNESS: That particular competition that is what we had set up. It is announced and the band plays a long drum roll and there is the suspense and fanfare that goes with this.

Q And you have two balls drawn first?

A Yes.

THE COURT: This doesn't create suspense among those who were picked.

Q Who was the winner that year, 1970?

A In that particular year Martin Frank won?

Q Now, did you make any record of when you actually received the stock from Mr. Frank in connection with this charity to cover contributions for the stock?

A No, other than just the letters that I had, the correspondences.

Q Did you ever arrange to meet Mr. Levine, to the best of your recollection?

A No.

Q And you have not seen him until today?

A I'm not sure who he is at the moment, but I have never seen him until today.

Q Did there come a time in November of 1975 when you were questioned by Federal agents and by the United States Attorney's office concerning backdating of letters on charitable contributions?

A Yes.

Q Did you thereafter agree to testify and provide whatever exhibits, whatever documents you had in connection with this?

A Yes.

Q And did the Government advise you you would not be prosecuted nor would the school for your participation in backdating these letters and accepting the

contributions for the school?

A Yes.

MR. LITTLEFIELD: I have no further questions.

THE COURT: All right.

MR. LITTLEFIELD: We will offer this newsletter, your Honor.

THE COURT: I take it that is the announcement of the dinner?

MR. LITTLEFIELD: It is the newsletter.

MR. BERGER: Was that when the raffle took place?

MR. LITTLEFIELD: He said the raffle took place during this dinner.

THE COURT: All right, received.

(Government's Exhibit 14 was received in evidence:)

xx

XX CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Kolatch, did you discuss your Ping-Pong testimony with the U. S. Attorney today?

A Yes.

Q Had you discussed your Ping-Pong testimony with him before today?

A Yes.

When was that?

A Within the last few days.

Q How many times did you have this discussion with him regarding the raffle and the choosing of the winner?

A Once and possibly twice.

Q But specifically during the luncheon recess today; is that correct?

A No, I didn't discuss it -- during the luncheon recess?

Q Yes.

A I didn't understand your question. Coming back in he just asked me who picked the raffle.

Q You testified that you had never met Mr. Levine at any time; is that correct?

A That is correct.

Q And had you at any time ever had any telephone conversations with him?

A I had several, at least two.

Q At least two?

A Yes.

Q Did he call you or did you call him?

A He called me on two occasions and I returned the calls.

Q Did you talk with him?

A What did you tell him?

A I told him that I could not discuss --

MR. LITTLEFIELD: May we have a date of approximately when this occurred?

THE COURT: Yes.

When did these telephone conversations occur?

THE WITNESS: I --

MR. BERGER: Maybe I can ascertain that.

Q Could these telephone conversations have been about April, March or April of this year?

A Yes.

MR. LITTLEFIELD: Again may I ask Mr. Berger to advise the jury that this questioning is based on material turned over to him by the Government?

MR. BERGER: I didn't hear you.

THE COURT: He wants you to advise the jury that this questioning is based on material that the Government turned over to you.

MR. BERGER: Yes.

THE COURT: This is March and April of this year, you say?

MR. BERGER: March and April of 1976.

THE COURT: Does that sound right to you?

THE WITNESS: Yes.

Q What was your testimony, again, with regard to these telephone conversations, that you could not discuss anything with him?

A That is correct.

Q And other than this telephone communication, did you ever have any other verbal communication with him in any way, shape or form?

A No.

Q Is it not a fact that all of your dealings regarding stock contributions were done with Martin Frank?

A That is correct.

Q Do you know of your own knowledge when Martin Frank received the stock certificates of Salem from Mr. Levine?

A No.

Q Have you any independent knowledge of that?

A No.

Q When you received the Salem certificates from Mr. Frank which you testified was some time in March of 1970, was it accompanied by a transmittal letter?

A I didn't testify I received it in March of 1970. I said I received it between February and

September of 1970. It was accompanied by a transmittal letter.

Q Could it have been in September of 1970 that you received it?

A It is doubtful.

THE COURT: Doubtful you did; right?

THE WITNESS: Yes.

Q How about July and Auust?

A Possible.

Q Could it have been received even as late as that?

A Yes.

Q Could it have been received, for argument's sake, on August 15?

THE COURT: Let's not do it for argument's sake.

Q Could it have been received on August 15?

A No.

Q August 6?

A No.

Q But you knew and you did testify it was possible it could have been received in July or August?

A I would testify it could have been received in July or August, although I was out of the country from

August 1 until around August 21.

Q Do you know of your own knowledge when the transmittal received accompanying the Salem certificates was prepared?

A No.

Q Will you accept the date of May 26?

THE COURT: Let's not ask him whether he would accept the date. He does not know when it was prepared, but he took the letter given to him by Mr. Frank.

THE WITNESS: That is correct.

Q So it is your testimony that the cerificate was received with a letter and that you accepted it and accepted the letter as of the date it stated?

THE COURT: Not accepted the letter. He accepted the certificate and the letter.

MR. BERGER: He accepted the certificate and the letter.

THE COURT: Okay.

A Yes.

Q Do you know of your own knowledge when Martin Frank received the Mayrsohn Prevor stock that you have testified to earlier?

A No.

Q Again you know only the time that he gave it to you?

A Yes.

MR. LITTLEFIELD: That is the Prevor-Mayrsohn stock.

MR. BERGER: I'm sorry.

Q To your knowledge, did the defendant Jack Levine in this courtroom know of your backdating of the letter that acknowledged the receipt of the donation from Martin Frank?

A I can't say.

Q Do you know whether he knew?

A I don't know.

Q Your answer is you don't know?

A Right.

Q Do you have any knowledge as to whether the transmittal letter of the stock was prepared on the date that is stated in the letter and that again was May 26, 1969?

A I have no knowledge of that.

Q Now, Mr. Kolatch, I know you were on a campaign to raise funds for the high school. What was the amount that was needed at the time to erect the high school?

A There was no mount stated. We were contemplating a building ultimately.

Q There were no estimates or costs --

A No, not at that stage. We had not planned actually building at that stage.

Q Do you know about how much money you wanted to raise?

A We had an idea of the cost of the school.

Q What was that idea?

A Somewhere close to a half a million or three-quarters of a million dollars for a high school.

Q Can you state what the total amount was that was received by Hillel through the stock contributions made through Martin Frank's clients?

A Can you repeat that, please?

THE COURT: He wants to know if you know how much money came in; how many securities or what was the value of the securities that came to the school as a result of Frank's assistance obtained from his clients. Do you have any idea?

THE WITNESS: To the best of my recollection about $95,000. I'm not being 100 per cent to the penny.

Q That was the total amount, the total value

of the securities that were raised?

THE COURT: That is his best recollection.

Q $95,000 is your testimony?

THE COUT: That is his best recollection.

MR. BERGER: Thank you, your Honor.

Q Was there any time, Mr. Kolatch, that you had occasion to cash checks for Mr. Frank's clients?

A To the best of my recollection that theywere for Mr. Frank's clients, no.

Q The Government has introduced an exhibit about raffles and you have given some Ping-Pong testimony.

Were there any other affairs such as Las Vegas nights that the school held?

A Yes.

Q Would you tell the Court and jury what the Las Vegas night was?

A The Las Vegas night was a fund raising program run by the school at which time people could come in and it was like a gambling evening whereby people would purchase chips and play various games. That would be the evening, you know.

Q First of all, would this night be on the premises of the Hillel School?

A Yes.

Q Would the equipment and the chips be purchased by the participants --

THE COURT: How did you get the chips?

THE WITNESS: There was a company which ran this program, so they would come in with all the equipment, chips and everything else, and that is the way the program was run.

Q Were there large amounts of cash available on these nights?

A An individual could write a check up to $250 and they would in turn receive 10 per cent less than the $250 in the form of chips to play with.

Q Could any checks have been written for more than $250?

A It is possible.

Q Do you know whether any arrangement existed between you or members of your school in which Martin Frank's clients cashed four or five figure amount checks?

THE COURT: Was that for chips?

MR. BERGER: Four or five figure amount checks, just cash them.

THE COURT: No.

A I know of none.

Q Was there any time in which Frank's clients or a member of the school --

THE COURT: Anybody that you knew was a Frank client.

Q -- could make out a check for the amount of, let's say, $7500 and receive back $5000?

A No.

(Continued on next page.)

Q In December of 1969 you talked about having a board meeting earlier and in that board meeting of the Hillel School there was a discussion regarding the various securities that were going to be contributed either through Mr. Frank or others, that is, charitable contributions, is that correct?

A No.

Q Was there some form of meeting of the new board in December 1969?

A Yes, there was a meeting of the board but there was no discussion about any fund raising at this particular meeting.

Q Not fund raising?

A Or any securities or anything related to it at this point. We had no knowledge of it.

Q Wasn't it your earlier testimony that you discussed charitable contributions at either that board meeting early 1970?

A My testimony was that I discussed with Mr. Frank charitable contributions and I said, to the best of my recollection, it was either late January, February.

I said that to the contrary of what you are saying that I had discussed with Mr. Frank previously, prior to the meeting we could have mentioned the finances

of the high school at that board meeting. I specifically stated we did not. I use that as a frame of reference for dating.

Q Was there any time then that you discussed with your board the acceptance of charitable contributions or your board took up the question of charitable contributions from Mr. Frank?

A No.

Q In other words, you acted independently on your own --

THE COURT: No, don't put in in other words or something else. He said he did not discuss it with the board.

Q Did you act independently of the board in accepting these contributions?

A My job is to --

Q Just yes or no?

THE COURT: He can't answer that yes or no. He said that was his job to receive contributions.

THE WITNESS: That is correct.

MR. BERGER: I am directing his attention to whether the determination --

THE COURT: He said he did not talk to the board.

Q Was ever there any time when Mr. Frank was rewarded by you for his efforts in raising funds through these charitable contributions?

A He was recognized for it. He wasn't rewarded but recognize for it.

For example when we dedicated the high school building, the initial high school building, he was given the honor of cutting the ribbon, the ribbon cutting ceremony.

THE COURT: When was that.

THE WITNESS: In June 1970.

Q Other than his ribbon cutting he never received any compensation?

A None whatsoever.

Q There was testimony by you earlier regarding various brokerage sales affected by the school through different brokers?

A Yes.

Q You recognized Dopler as one, is that correct

A That is correct.

Q You also recognized Dressner & Company as one of the brokerage houses that sold stock?

A Yes.

Q How about Norton & Company?

A I recognize the name.

Q Is it not a fact that certain securities were sold by the charity through those brokerage houses?

A Yes, but there would have to be a clarification on that.

THE COURT: What is the clarification?

THE WITNESS: Dopler & Company I directly sold through. Dressner I had no relationship with, no dealings with them.

Q How did you get to Dressner then?

A Through Mr. Frank.

Q And Norton & Company also?

A Through Mr. Frank.

Q You knew Dopler directly?

A I knew Mr. Grey, I met him.

Q Dopler was not in any way related -- your introduction of Dopler was not related to Mr. Frank, is that correct?

A Not at all.

Q Have you held a personal brokerage account in any of the organizations I just mentioned?

A No.

Q You have a brokerage account personally?

A At the present time, no.

Q Did you have one for the period between 1969 and 1975?

A I did some trading.

THE COURT: You had a brokerage account.

THE WITNESS: Not with any of those firms.

THE COURT: That is right, sure.

Q Did you sell any stock in your personal account at any time which was stock or some stock contibuted to the charitable organization?

A No.

Q Did Mr. Frank help you or assist you in any way to dispose of stock which was contributed?

A Yes.

Q How did he sasist you?

A I recall specifically one particular stock he sold. I furthermore say any stock sold to Dressner & Company Mr. Frank handled. I had nothing to do with it.

Q Do you remember which stock that was?

A I remember one stock, Technology Leasing. I recall another stock Bio-Berkley --

Q Berkley Bio-Engineering?

A Whatever it is.

Q That is through Dressner & Company?

A That is correct.

Q Do you know whether Mr. Frank accepted any compensation from those companies for selling the charitable stock?

A No.

Q You say you don't know?

A I said no.

Q Was there any time when the contributed stock which you gave credit for to the donors was never taken in directly by you?

THE COURT: I can't understand that question.

MR. BERTER: I will rephrase it.

THE COURT: I wish you would.

Q Did Mr. Frank always give you all the stock contributed by his clients?

A No.

Q Did he give you portions of it?

A Would you be more specific?

Q I asked you the question whether he gave you all and he say no. Did he give you part?

A If you are referring to part of a particular stock or referring to some stocks no and some stocks yes?

Q Either one?

A To the best of my knowledge if he gave me

stock we got all the stock. He didn't give me 50 shares and keep 50 shares, if that is what you are referring to.

There were situations where he gave me no shares, that I never saw the stock.

Q But you had the credit for it?

A That is correct.

Q Do you know what happened to that stock?

A The only way I knew about it frankly is they were sold. We received the proceeds of the stock.

Q You received the proceeds?

A Through Dressner & Company. That is what you were referring to before.

Q Did he ever assist you in selling restricred stock?

A To the best of my knowledge, no.

I am not certain of one particular stock whether it was restricted or not. I could check it.

Q You explained earlier than you understood what restricted stock was?

A I do.

Q Did you ever cause to have writings made to the Securities and Exchanre Commission requesting that this restricted stock be or have the restriction lifted

for some reason?

A Yes.

Q To your knowledge were these referred to as no-action letters?

A Yes.

Q Did you ever receive a no-action letter on any of these restricted stocks from the Securities and Exchange Commission?

A I would also have to have a clarification.

THE COURT: I think the question is did you or somebody else get a no-action letter from the SEC in connection with the stock contributed to the school? Do you recall ever receiving such a letter from the SEC?

THE WITNESS: I recall selling stock which originally was restricted. Whether that was lifted because of other reasons, I don't know.

THE COURT: Do you recall receiving a letter from the SEC?

THE WITNESS: I honestly don't.

THE COURT: All right.

Q In preparing the request to the SEC of a no-action letter did you do this yourself or did you receive assistance from Mr. Frank?

A I did it myself. I may have asked Mr.

Frank some questions about who owned the stock, the period of time and so forth.

Q Were you familiar with the procedures or the terminology used to make the request of the SEC?

A Not really.

Q How did you make --

THE COURT: Let's not get into that.

You wrote some letters to the SEC or a letter, is that correct?

THE WITNESS: I wrote a few correspondences tot he SEC. I found out at this point what I had to do. Until that point I had no knowledge.

THE COURT: How did you find out?

THE WITNESS: I questioned how to handle restricted stock. The SEC was one of the people.

THE COURT: You questioned whom?

THE WITNESS: I think in one instance I may have called the SEC and asked them specifically.

Q You also asked Mr. Frank?

A No, I believe I asked Mr. Frank for information they said I would require to make a request for a no-action letter.

Q Let us get back to t he letters that acknowledged the gift that was made.

It was your testimony that your secretary at your instruction mailed the acknowledgment letter directly to Mr. Levine, is that correct?

A No.

Q What was it?

A My testimony was I instructed my secretary to type the letter. Then she put it on my desk and I signed it and I may have mailed it. I may have put it in the outgoing mail.

Q It was addressed to Mr. Levine?

A To the best of my recollection, yes.

Q Was there ever a time to your knowledge or recollection that you didn't mail it? That maybe someone else mailed it?

A That I didn't mail what?

Q Any of the letter?

A Yes. Some letters I did give directly or sent directly to Mr. Frank.

Q Some letters were sent by your secretary?

A Yes.

Q Or someone else?

A Yes.

Q So that you did not always have direct knowledge whether these letters were going to the donors or

not?

A Those sent to Mr. Frank I usually put a cc. Martin Frank on it.

Q Is it your testimony that some of the letters went directly?

A That is correct.

Q As distinct from the donors?

A Correct.

Q But the letters were nevertheless addressed to the donors?

A Correct.

Q You referred to your board of directors and went through an extensive colloquy about how they were elected. This refers now to the stationery change.

Was it not your testimony that the directors changed in or about June of 1969?

A On or after June 17.

Q Do you know exactly when it may have changed?

A I know June 17. That was the date of the election.

Q It changed June 17.

To your recollection when after the change of directors did you change stationery?

A Most probably about September, about September

5, 6, somewhere around then.

I only use that point of reference because that is when the school year begins.

Q In other words, it is possible that you were using old stationery between June and September?

A Yes.

Q So that other correspondence could have gone out on old stationery?

A It is possible.

Q Is it not a fact that the scheme, this entire arrangement of contributions and backdating were discussed between you and Frank?

A Yes.

Q Was it discussed between you and anyone else?

A No.

Q Was it discussed between you and Levine?

A No.

Q The defendant?

A No.

Q To your knowledge was this scheme known to anyone else?

A No.

MR. BERGER: I have no other questions.

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Frank and he discussed the whole thing at the beginning, it was for the purpose of getting Levine a tax break.

THE COURT: What bothers me is the objectives. Frank and Kolatch and the objectives of Levine were different certainly. It wasn't a common scheme.

I will think about that a little and think about it at lunch and rule on it after lunch.

Let me ask you, how long do you think the defense would be?

MR.BERGER: If your Honor please, we hope to finish before -- the direct case before the end of the day although we again are you request the tapes be produced on our case and l istened to by the jury and the courtroom be prepared for that purpose.

MR. LITTLEFIELD: I would like to respond to that at this point, your Honor.

First of all, I don't know what Mr. Berger wants to show by these tapes.

THE COUTT: What tapes are you fellows talking about? You are ahead of me there.

MR. LITTLEFIELD: A tape of a conversation between Frank and Jerry Allen. Jerry Allen is a person whom Frank --

THE COURT: He is not in this case, that was

in another case.

MR. LITTLEFIELD: He went to hkm and tried to get him to sign a false affidavit and Frank testified to that and admitted it.

Now, I would like an offer of proof by Mr. Berger as to what there is in this tape that adds in any important significant way to what it is that Frank already admitted that he did and I don't see it in the tape and failing to have that offer and failing for the Court to be convinced of it, then this should be excluded because it is extrinsic proof of material which is proper for cross-examination but you cannot prove extrinsically bad acts if these are admitted by the person on the stand and we woujld like to have an offer.

MR. BERGER: Your Honor, we are going to rely on the authority of Brady versus Maryland in that.

THE COURT: That is easy to say but tell me what is the offer of proof?

MR. BERGER: Our offer of proof is Frank has stated on at least two occasions in a tape that there will be subornation of perjury and he directed the witness to testify falsely.

THE COURT: Didn't he say that on the stand?

MR. BERGER: Your Honor, there is no way of

getting the inflections and the flavor of what he said because he is a hostile witness and we are talking about a possible jail sentence and I feel that they should hear it and we are trying to discredit this man and this is a credibility case. That is why we are discussing Brady versus Maryland and any instrumentality involved and this was a tape of the Government, a secret Government tape.

MR. LITTLEFIELD: I will refer the Court to 608(b) of the Federal Rules of Evidence which says in connection with specific instances of conduct which relates to cross-examination, specific instances of conduct of a witness for the purpose of attacking or supporting his credibility, other than conviction of a crime as provided in Rule 609 may not be proved by extrinsic evidence. They may however, in the discretion of the Court if probative of truthfulness or untruth be inquired into on cross-examination of the witness.

MR. BERGER: That is our point.

THE COURT: I will rule on this. I am not going to receive that tape.

Is there another tape?

MR. BERGER: Well, there are two tapes, both are telephone conversations.

THE COURT: Both relate to the same thing?

MR. BERGER: Both conversations with Jerry Allen and one of them is roughly about a half hour tape and relates to specifically --

THE COURT: They are collateral and your point is they have some bearing upon the credibility of Mr. Frank.

MR. BERGER: Absolutely.

THE COURT: But I rather think on the basis of the examination and the extensive cross-examination of Mr. Frank, I don't think, in my discretion they add anything and I will rule out the tapes.

All right, we will proceed at 1.30, gentlemen.

(Luncheon recess.)

* * *

You are excused.

(Witness excused.

MR. BERGER: Your Honor, at this time we are going to call the defendant, Mr. Levine.

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J A C K L E V I N E , the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. BERGER:

Q Mr. Levine, you are the defendant in this action, is that correct?

A Yes, sir.

Q Where do you live?

A 630 West 246th Street.

Q Speak up, please.

A 630 West 246th Street, Bronx, New York.

Q What is your occupation?

A I am unemployed at the present time.

Q What kind of work have you done in the past?

A I was a stockbroker.

Q How long have you worked in the stockbrokerage business?

A About 18 years.

Q Would you describe to the Court and to the jury the kind of work that you did?

A I was primarily in the syndicate area. I brought companies public, offered new securities through underwritings.

THE COURT: Could you tell us a little -- the jury and I are not too familiar with these things. Perhaps if you could tell us in a little more detail on that, it would help us, about syndicate.

THE WITNESS: A company would need capital. Instead of going to their conventional sources of borrowing such as a bank, they would enter into an arrangement with a stockbroker to underwrite their company or raise money by selling shares to the public, and my job was to negotiate underwriting terms with the company and to arrange for what we call a syndicate of brokers to participate in the distribution of the shares to the public.

Q During the course of your business did you have occasion to buy or sell securities to customers?

A Yes, sir.

Q Did you receive commissions in the normal course for buying and selling?

A Yes, sir.

Q And during the course of your employment were there any kinds of activities, business activities, as part of the securities industry that you engaged in?

A Yes, I was involved in mergers, acquisitions and in institutional type financing.

Q When you say mergers, acquisitions and institutions, could you describe what is meant by those terms?

A All right.

A merger is when two companies merge with each other to form one company.

An acquisition, one company would be acquiring another company.

An institutional financing is where we would seek financing for a company from an insurance company, an SBIC or another source.

Q What is an SBIC?

A It is a small business investment company. It is quasi-licensed by the United States Government.

Q Did you state that you raised funds through them?

A Yes, sir.

Q When you arranged these mergers and acquisitions, you arranged them for clients?

A That's correct.

Q Did you ever arrange them for yourself?

A No.

Q When you arranged them for clients did you receive compensation?

A Yes.

Q Would you state what kind of compensation you might receive at any one point in time?

THE COURT: I think that is difficult. I suppose it all varies on the kind of transaction.

THE WITNESS: It could either be in the form of cash or securities.

THE COURT: Stock.

THE WITNESS: Stock in a company, sir.

Q During the 18-year period that you referred to as your occupation length, did you work for other companies?

A Yes.

Q Were they all in the brokerage area or in the brokerage business?

A Yes.

Q What kind of firms were these?

A These were over-the-counter firms or firms who

specialized in over-the-counter stock. These were firms who were specialists in underwriting or bringing to market new issues and on two occasions or three occasions I worked for members of the New York Stock Exchange.

Q Were these what we could call retail firms?

A In most cases, yes.

Q Is there another kind of firm besides a retail firm?

A Well, there is a so-called -- there is a firm that specialized in institutional sales, in other words, doing business with banks, insurance companies and mutual funds, and there are firms who specialize in only underwriting and handle no retail accounts.

THE COURT: Retail accounts means people like the jury and myself who might want to buy ourselves some security, is that a retail account?

THE WITNESS: Yes, sir.

Q Were there any wholesale accounts? Were there any companies you worked for that were wholesale companies?

A There was no company I worked for that was exclusively a wholesaler but there were companies I worked for who did primarily wholesaling. The public, the

customers dealing with the public was just a side line.

Q Would you describe what is meant by wholesale?

A Wholesale is distributing securities to other brokers rather than distributing to the public.

Q Was there a time when you were a principal in your own firm as distinct from an employee for someone else?

A Yes.

Q When was this?

A It is probably the latter part of '59 -- from '59 to '64, I believe.

Q Would you describe the kind of work or the kind of activities that your own firm had?

A It was a small over-the-counter firm, did some underwritings, distribution and dealt with the public.

Q Did there come a time when you first met a person called Martin Frank?

A Yes, sir.

Q Do you recollect when this was?

A Right about 1958, 1959.

Q Did you know him prior to that time?

A I'm not sure. I don't think so. I may have met him.

Q And after you met him, did you have any relationship with him?

A Yes.

Q Would you describe the relationship?

A He represented my brokerage firm and me personally.

THE COURT: What's the name of your firm at that time?

THE WITNESS: The name of my firm was Kordan, K-o-r-d-a-n & Company, Inc.

THE COURT: And it was your company?

THE WITNESS: Yes.

THE COURT: You say Mr. Frank was attorney for the company and for you at that time?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Q In connection with his representation of your firm, what kind of transactions did he represent you for?

THE COURT: I think the question really is what kind of legal services did Mr. Frank perform for Mr. Levine.

MR. BERGER: That's correct.

THE COURT: All right.

A He did the legal work in forming the broker-

dealer, filing the applications with the Securities & Exchange Commission and the National Association of Security Dealers and --

Q Speak up, please.

A Sorry. And the State agencies. He represented the firm as an underwriter when t he firm was offering securities to the public.

THE COURT: When you say he represented the firm, he was lawyer for the firm?

THE WITNESS: He was attorney for the firm, sir.

THE COURT: He was lawyer for the firm but he was acting as an underwriter?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q And for how long a period did he represent your firm?

A Until the firm closed, which was in about 1964.

Q And how long was that, in years?

A It was about five years, six years.

Q And did he continue to represent you personally after that?

A Yes, sir.

Q For how long was that?

A Up until 1972 or 1973.

Q Now as an attorney representing your firm, did he ever prepare any documents for you?

A Yes, sir.

Q Would you state the different kinds of documents he would prepare?

A If I had to file a form with an agency, he'd prepare that type of a document. If I was doing an underwriting on a company and had to issue a letter of intent or an underwriting agreement,he would prepare those documents for me.

Q And after your firm closed did he continue to represent you personally?

A Yes, sir.

Q You stated that. And did he prepare documents or continue to prepare documents for you afterwards personally?

A Yes, sir.

Q And would you state the type of documents he may have prepared for you personally?

A If I was going to enter into an arrangement with a company to seek a financing and there was an arrangement predicated on a financing, he would set up a

letter that would provide for compensation if I was successful.

And he also represented firms who I worked for, and there again did underwriting type of legal work for the firms.

Q These documents that he prepared for you, did you have to sign any of these cocuments?

A Yes, sir.

Q Where would you sign these documents?

THE COURT: I suppose he'd sign them in different places.

A In different places. I'd sign them either in his office or it could be signed in my office.

Q I am referring to the locations.

A Either my office or his office.

Q And this type of documents that he was preparing, did you ever prepare any such type documents yourself?

A I prepared documents, but not legal documents.

Q Did you ever sign any papers or documents in blank and leave them with Martin Frank?

A Yes, sir.

Q Under what circumstances did you do this?

A If a letter of intent had to be issued, there were numerous occasions, Mr. Frank had a supply of

stationery in his office. If it was for a company, underwriting a firm I represented, he had the stationery of that company in his office.

Q And how would you describe this arrangement that you just testified to?

A It was a very convenient relationship for me because I did a lot of traveling and he was always there to take care of things that had to be taken care of.

Q In your opinion was this a customary or normal relationship that you had with --

THE COURT: Wait a minute. I don't know about that question.

This was what you did, I think you testified.

MR. BERGER: I'm talking about the procedure. I'm referring to the procedure.

THE COURT: He just said this was his relationship.

MR. BERGER: All right.

Q Would you describe your relationship with Mr. Frank?

A Well, besides being my attorney, I considered him a personal friend.

Q Is there anything else that you would say in that regard?

A Our wives knew each other. We met in places away from New York, Florida --

THE COURT: You mean you went on trips with him?

THE WITNESS: Yes, sir. On one occasion I brought my son and he brought his son down to Florida. We combined some business with some recreational time with the children. We went out to Las Vegas together. I visited him with my family up at his country home.

(Continued on next page.)

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Q You trusted him?

A Absolutely.

Q Did there come a time when you heard of a company called Salem Electronics?

A Yes, sir.

Q Will you state when you first heard of the company?

A Salem Electronics was a subsidiary of a company called Metalcraft. It was basically a shell.

Q When was this, Mr. Levine?

A Approximately some time in 1968, I imagine.

Q Did you do any work for Salem Electronics or --

A Yes.

Q Were you self-employed in 1968?

A No, I was working for Louis B. Meadows & Company.

Q Did Louis B. Meadows & Company do any work for Salem Electronics at that time?

A Yes, sir.

Q Will you describe the kind of work that it was doing for Salem?

A Actually it was Metalcraft, because Metalcraft was the parent, and if I remember correctly, they had asked the Meadows organization to seek an acquisition for the

subsidiary, which was Salem Electronics.

Q Was this an American company, Salem?

A Yes, sir.

Q What kind of actual work did you do with respect to Salem Electronics?

A Mr. Meadows asked me to seek an acquisition and I was successful in obtaining one. It was a company in the shoe business.

Q Was there any compensation which Meadows received to your knowledge for the work that you did on their behalf?

A Yes, sir.

Q What was this compensation?

A Abot 50,000 shares of stock to Salem.

Q Was this restricted stock?

A Yes, sir.

Q Do you know when Meadows & Company received this compensation?

A It was concluded in 1968, I think they received it in 1969, the beginning of 1969.

Q I am sorry?

A I think the beginning of 1969.

Q That is your best recollection?

A Right.

Q Did you receive any compensation from Meadows

for the work you did in this acquisition?

A Yes, I received 16,666 shares of stock.

Q Was this restricted stock?

A Yes, sir.

Q Mr. Levine, I show you Government's Exhibit No. 8 and ask you to identify it.

A That is my certificate.

Q That is the Salem Electronics certificate for 16,666 shares, is that correct?

A Yes, sir.

Q Do you know what date the stock certificate was issued in your name?

A Some time in February, I believe, 1969.

Q I ask you to look at this certificate again and ask you whether it is dated?

A Yes, sir.

Q Does it refresh your recollection when the stock certificate was issued to you?

A Yes, February 27, 1969.

Q Do you remember whether you received the certificate yourself in your hands from the company's transfer agent?

A It was probably some time after or shortly after that.

THE COURT: Do you recall receiving it?

THE WITNESS: Yes, I did.

THE COURT: All right, you did receive it.

Q Do you recall receiving it?

A Yes, sir.

Q Do you remember approximately when it was?

A Shortly after the transfer agent issued it.

Q Could it have been in March?

A Yes, sir.

Q Did you take possession of it?

THE COURT: You are being a lawyer, did he take possession. He said he received it. Do you want to know what he did with it? Ask him that.

Q What did you do with the certificate?

A Brought it home.

Q Did you have any personal brokerage account, stock brokerage accounts with any firm?

A Yes, sir.

Q Will you please state --

THE COURT: Indicate the period of time.

Q In the period commencing 1969, the beginning of 1969.

A Yes.

Q How many did you have?

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A Two, three, four -- I have no idea, I just can't recall.

Q Do you recollect having an account with Continental Securities?

A Yes.

Q Do you recollect when this was?

A I haven't the slightest idea, but I did have an account.

THE COURT: You have no recollection when you opened it?

THE WITNESS: I don't remember, your Honor, when I opened it.

Q Did you have an account in May of 1969?

A It is possible.

Q Did there come a time when you delivered this certificate to Continental Securities?

A I believe I did deliver it.

THE COURT: Do you recall that?

THE WITNESS: I dont recall the exact --

THE COURT: Do you recall delivering it?

THE WITNESS: I know I did business with them, your Honor. I don't recall actually giving it to them.

Q To the best of your recollection, seven years ago, 1969 -- would this put it in May?

THE COURT: Let's not get into that. Mr. Levine recalls he delivered it. He doesn't know when.

THE WITNESS: I have no idea.

Q But you did testify that it may have been in May?

THE COURT: No, he didn't. Will you please stop leading him? He didn't say that.

MR. BERGER: There was testimony on the record, your Honor.

THE COURT: Please. He says he doesn't recall.

Q Did you deliver the stock certificate to Continental for any purpose?

A I could have.

THE COURT: You have no recollection?

THE WITNESS: I have no clear recollection, seven years is a long time.

THE COURT: Do you remember who you saw at Continental Securities when you had an account?

THE WITNESS: My dad used to work there for a period of time. That was -- I mean, I might have given it to him. I just don't have any recollection.

Q Did you deliver this certificate in May, 1969, for a signature guaranteed to Continental?

THE COURT: Wait a minute, let's stop that.

He has no recollection. He says he delivered it or he may have given it to his father. Don't keep repeating that.

Q For what purpose did you deliver the certificate to Continental Securities?

MR. LITTLEFIELD: Objection. He said he did not whether he delivered it or not.

THE COURT: I think again -- it is a long time ago --

THE WITNESS: If I did deliver it, it was unregistered. The only logical reason would be for a guarantee. It could be that.

THE COURT: But you don't recall that.

Q You stated you did have an account there?

A Yes, sir, I did have an account there sometime -- I don't recall the exact date.

Q To your knowledge, was this certificate guaranteed by Continental Securities?

A I saw --

THE COURT: Are you asking him then or now? He knows now.

Q Did you know at that time whether it was guararnteed?

THE COURT: What time?

Q In May of 1969.

THE COURT: No, will you stop that, really.

A The first time I had knowledge is when I saw it before the grand jury, your Honor.

Q Did there come a time when this certificate was returned to you?

A Yes, sir.

Q Do you recollect when that was?

A Some time in 1969.

THE COURT: How do you recollect that?

THE WITNESS: It doesn't seem logical for me to leave unregistered shares at a brokerage firm. There is no reason to, you can't sell the shares.

Q Did you look at the certificate or recollect seeing the certificate in 1969?

A No, I don't.

Q Do you recollect the guarantee on the back of this certificate?

A I don't recall seeing -- I recall the signature. I don't recollect the guarantee. I don't remember that whole --

THE COURT: You don't remember the whole transaction?

THE WITNESS: That is right.

THE COURT: All right.

Q Did there come a time when you first discussed Salem Electronics with Martin Frank?

A Yes.

Q Will you describe how this took place? First of all, before you do that, would you state when this took place?

A Some time in 1969.

THE COURT: Some time in --

THE WITNESS: 1969, your Honor.

Q Will you describe what took place?

THE COURT: Where was this, do you remember where this was?

THE WITNESS: It could have been in Mr. Frank's office or it could have been out over dinner, any place. We did meet.

THE COURT: Do you recall any particular time? You say some time in 1969?

THE WITNESS: I have no idea, no time frame.

Q Did you have a conversation with him?

A Yes, sir.

Q What did he say to you and what did you say to him?

A He mentioned The Hillel School to me. He discussed the possibility of my making a charitable con-

tribution.

THE COURT: Did you know about The Hillel School?

THE WITNESS: No, I had never heard of it before.

Q Was your hearing of The Hillel School the first time when Mr. Frank mentioned it?

A Yes.

Q What did he then tell you about the contribution?

A That I could make a contribution and I would receive certain tax benefits from the contribution.

Q He was representing you at this time?

A Yes, sir.

Q Did you request his legal advice regarding the contribution that you were proposing to be made?

A Well, I believe it was legal advice, because -- I don't know where to separate legal from friendship. Some time you start a conversation one way and it ends up another way. But I would say in thisparticular instance I knew nothing about it.

THE COURT: Do you remember what he said?

THE WITNESS: I asked him -- I had no idea what it was. I just did not know.

THE COURT: But what did he say after that?

He said something about tax benefits? He mentioned tax benefits?

THE WITNESS: Your Honor, I just haven't the slightest idea other than that just --

THE COURT: You just heard Hillel School and tax benefits?

THE WITNESS: That is right.

Q At that time did he discuss or tell you anything about backdating?

A No, sir.

Q What did you do after you asked his advice as to Salem Electronics for the charitable donation?

A I don't know if I had -- we had an additional conversation at this meeting or on a subsequent meeting. I believe it may have been a subsequent meeting when I informed him, okay, I will make the contribution, or something to that effect. I can't remember.

Q How did you go about doing this?

A By delivering the security to his office or I had them delivered. I just don't remember which

Q Do you remember when you delivered the security to his office?

A Some time in 1969.

Q When you delivered the stock certificate to his

office, did it have the signature guarantee on the reverse side, to your recollection?

A I really don't know. I just can't recall. I just can't recall it.

Q After you delivered it to him, would you state what happened?

A I gave him the security and he said there is going to have to be a letter made out to the charity.

I said, "Make out the letter to the charity," and he says, "Well, here, sign a piece of paper."

I signed the piece of paper, on the lower part of a blank piece of paper, and he typed it in, and that was it.

Q Is that the letter --

MR. BERGER: May I have the original?

Q I show you Government's Exhibit 7, and ask whether this is the letter or is that your signature?

A Yes, sir.

Q Is it your testimony that this piece of paper was signed in blank by you?

A Yes, sir.

Q It was your testimony that after your signature appeared on the letter the rest of the letter was typed in and dated?

A Yes, sir.

MR. BERGER: I will show this to the jury again.

(Handed to jury.)

Q Did you ever see this letter again after you had signed the blank piece of paper?

A I believe I saw it once. I may have saw it some time in 1972 or '73. going through an audit.

I believe that is when I saw it. I just can't recollect. I believe I saw it, but I just don't remember.

Q When you filed your tax return, did you file that as an exhibit or have a copy of that letter at all?

A I don't think so. I just don't remember. I honestly can't.

Q Is there any way you could have obtained possession of this letter after you had signed the paper?

THE COURT: Wait a minute, I don't understand that question. I think that you say you did see it some time after, you think it may have been in connection with an audit, but you are not certain?

THE WITNESS: Right.

THE COURT: Isn't that right?

THE WITNESS: Yes, sir.

Q Did there come a time, Mr. Levine, when you received an acknowledgment from The Hillel School of your contribution?

A Yes, sir.

Q Do you recollect when this was?

A After I made the contribution.

Q Did you receive the letter directly?

A I believe I got it from Mr. Frank. As a matter of fact, I think I got it -- I believe I got it from Mr. Frank.

THE COURT: You are not really sure?

THE WITNESS: I am not sure, but I would say offhand it came from Mr. Frank.

Q Did he deliver it to you personally?

A No. Probably. He usually held on to all my papers whether pertaining to underwriting or what have you, kept the file, so I believe when I needed it for tax purposes I picked it up and brought it to my accountant.

Q Do you know whether the letter was delivered to Mr. Frank from The Hillel School?

A I don't know. I presume it was.

THE COURT: Don'tpresume. You don't know?

THE WITNESS: I don't know.

Q Was there any time that you ever met any of the personnel of The Hillel School directly?

A No, sir.

Q Did you ever meet the administrator of The

Hillel School?

A No.

Q Did there come a time when you spoke with Mr. Kolatch?

A Yes, sir.

Q Who was Mr. Kolatch?

A The administrator of the school.

THE COURT: You did speak to him?

THE WITNESS: Yes, sir.

Q Was this a telephone conversation?

A I initiated a telephone conversation. I believe it was in March or April of this year when I had three representatives of the IRS visit and question me about the contribution.

Q Why did you call Mr. Kolatch?

A Because I didn't remember anything about it and this was the institution I made the contribution to, so I called them, and I would get whatever documentation and information I needed from him.

Q What was the nature of your telephone conversation?

THE COURT: The nature -- do you remember what you said to Mr. Kolatch, is the question.

A I introduced myself to Mr. Kolatch and told him

that I made a contribution back in 1969, and that I am being questioned, the contribution is being questioned by the IRS.

And he said either he would get back to me or I would get back to him, and we had a subsequent telephone conversation where he advised me that he couldn't talk to me. He advised me to get an attorney.

Q Mr. Levine, have you ever been arrested for any kind of crime?

A No, sir.

Q Have you ever been arrested for anything involved in income tax problems?

A No, sir.

Q Have you ever been convicted or otherwise suffered any criminal judgment rendered against you?

A No.

Q In connection with your work as a broker, are you supervised or monitored by any regulatory agencies?

A Yes,sir.

Q Which regulatory agencies would these be?

A The Securities and Exchange Commission, the National Association of Securities Dealers, to a much lesser degree New York State.

Q Were you required to be registered with any of

these agencies?

A Yes, sir.

THE COURT: Have you been registered?

THE WITNESS: Yes, I have.

Q You have been a registered representative, I suppose?

THE WITNESS: Yes, sir.

Q During the period that you have been a registered representative have you ever had any proceedings or any other difficulty involved with any of these regulatory agencies?

A No, sir. Back in, I think, 1964 some time I had a bookkeeping problem in business, but it just involved bookkeeping, but never involved anything else.

Q With whom?

A The National Association of Securities Dealers.

Q What was the result of that?

A There was no result. I wasn't --

Q Any action taken against you?

A No, sir.

Q Against your firm?

A No, sir. I was just winding up a business, and it was a question of winding down.

MR. BERGER: Thank you.

THE COURT: We will take a short recess now,

ladies and gentlemen.

(Recess.)

(Jury present.)

THE COURT: All right, you may proceed, Mr. Littlefield.

MR. LITTLEFIELD: Thank you, your Honor.

CROSS EXAMINATION

BY MR. LITTLEFIELD:

Q Mr. Levine, you were a stockbroker for some 18 years, is that correct?

A Yes, sir.

Q And you had your own firm?

A Yes, sir.

Q And you bought and sold stocks?

A Yes, sir.

Q You dealt with mergers and acquisitions?

A Yes, sir.

Q During the course of time that you were a stockbroker, did you learn how it is that one transfers stock?

A Yes, sir.

Q And do you know how one transfers stock?

A Yes, s ir.

Q How do you transfer stock?

A You send it in to a transfer agent to be transferred.

Q Well, do you have to attach any records to it or does there have to be anything done to the certificate itself?

A The certificate must be properly endorsed.

Q How must it be endorsed in order for it to be transferable?

A The owners must sign it, the signature must be guaranteed, then it is sent in to the transfer agent.

Q How do you guarantee a signature?

A You guarantee it by having a bank guarantee it or by having a member of the New York Stock Exchange guarantee it. These are acceptable guarantees.

Q You could also make a stock negotiable by having a stock power, is that right?

A That's correct.

Q Is it your testimony that you don't recall whether, when you gave the stock certificate to Mr. Frank, the endorsements were on the back or not? Is that your testimony?

A When I gave --

Q Is that your testimony?

A You are talking about grand jury testimony or testimony here, sir?

THE COURT: No, testimony here, sir.

A That's correct, sir.

Q You do not recall whether when you gave the stock to Mr. Frank it was endorsed or not, is that right?

A That's correct.

Q Yet you know that when you transfer stock to make the transfer effective it must be endorsed, is that right?

A Yes, and when you sell securities you need that, sir, but this --

Q What about when you give it?

A You endorse it.

Q When did you give stock --

MR. BERGER: May the witness --

THE COURT: Let's not get too argumentative. I take it what you are telling us here about endorsements going to the transfer agent, it doesn't matter whether it is a sale or a gift of anything else; it is a transfer.

THE WITNESS: No, your Honor, Mr. Littlefield asked me what knowledge I had of transferring securities for securities transactions.

THE COURT: Yes.

THE WITNESS: Now I am knowledgeable in the securities transactions. I am not knowledgeable in charitable contributions, and I have no idea, you know, from endorsements or what --

Q What makes a stock certificate negotiable?

A An endorsement.

Q If it isn't endorsed, what good is it?

A Well, there are different ways of --

Q No, the question is if it isn't endorsed --

A It's no good.

Q So if you were to give it to somebody and it weren't endorsed, it wouldn't be any good, would it?

A That's correct.

Q So is it your testimony that you gave it to Mr. Frank; you don't recall whether, when you gave it to Mr. Frank, it was endorsed or not?

A That is absolutely correct.

Q So, so far as you are concerned, it may not have been any good when you gave it to Mr. Frank, is that right?

A That's possible.

Q Do you recall your grand jury testimony, when you were shown the Xerox front and back of the certificate, that you said that --

THE COURT: Wait a minute. If you are going to ask him a question, give counsel the page number.

Q "I show you Grand Jury Exhibit 3-L" -- this is Mr. Bush. 3-L is the front -- "and ask you if that is a photocopy of a stock certificate which was involved in your gift to the Hillel School."

Attached to it is Grand Jury Exhibit 4-L, which we now know is a photograph of the back of the certificate.

A Yes, sir.

Q "Is that a copy of the stock power" -- and we are now referring to 4-L -- "that was attached to the stock certificate that you gave to Mr. Frank?

"A Yes, sir."

Do you recall giving that answer to that question?

A Can I answer that my own way, your Honor?

THE COURT: First of all, do you recall making that answer to that question?

THE WITNESS: I recall making that answer.

THE COURT: All right.

Q Thank you. So in the grand jury, at that time you testified in the grand jury that you recalled that the stock power, the back of this, which we now know

is the back of this certificate, was in this form, is that right? It was endorsed?

A Mr. Littlefield, would you let me please explain it in my own words and I think you will be satisfied with my explanation?

Q When Mr. Berger asks you questions, when I have completed, then you can explain anything you want. I am trying to ask you whether or not, when you testified in the grand jury, you didn't say that the stock --

MR. BERGER: Your Honor, I think he should be permitted to answer the question.

THE COURT: I think he has. He said he did make that answer.

If there is anything more, you can bring it out on redirect.

Q With respect to this letter, Government's Exhibit 7, your testimony is that you signed a blank piece of paper, is that right?

A Yes, sir.

Q The line wasn't there, the letter wasn't there at all?

A That's correct.

Q Why did you do that? Why didn't you and Mr. Frank just sit down and have the letter prepared while

you were there?

A Because this was the way I did business. I traveled a lot. There are many times I'd rush up to sign papers and get on a plane and fly somewhere. I made maybe 15, 20 trips that year.

Q Did it make any difference to you when you actually transferred this, gave this stock to Mr. Frank?

A Well, you know, legally it makes a difference, of course.

Q Did it make any difference to you at the time?

A I have no recollection of thinking if it made any difference at the time because at the time I was just interested in making the contribution.

Q Do you remember when you gave the stock to Mr. Frank?

A I have no idea.

Q Was it after November 20, 1969, when we learn that Continental opened its account with Chemical Bank?

A Mr. Littlefield, I have no idea. I gave it to him in '69. I just don't remember the exact date.

Q How do you know you have it in '69 instead of January of '70?

A Because it was '69.

Q How do you know it was '69? You have no recollection.

A I have --

MR. BERGER: I think that's been asked and answered any number of times.

THE COURT: Wait a minute, gentlemen. Please relax.

Try to answer that. Why do you think it is 1969?

THE WITNESS: Because that is when I believe it happened, your Honor.

THE COURT: That is all?

THE WITNESS: That's it.

THE COURT: That's all.

(Continued on next page.)

Q Other than that you have no specific recollection of any event which occurred which would trigger your memory as to when it happened? Could it have been in 1970?

A I don't think so.

Q Why don't you think so?

A Because I don't believe I would make a charitable contribution in '70.

Q You don't believe you would make a charitable contribution in '70?

A I believe this was 19 --

Q No, answer.

A I just answered your question. I don't believe I would make this charitable contribution in 1970. I believe I made it in '69.

Q Was there something special about 1970 that you didn't want to make a charitable contribution?

A No, there wasn't.

Q So you could have made it in 1970?

A No, I didn't say that.

Q But you don't remember, nothing would trigger your memory as to when you gave it, if you gave it in '69? Yes or no.

A No.

Q Now, this letter, you say you saw it again in '72 or '73, is that right?

A I may have. I believe I saw it afterwards. The exact content of the letter is -- when I saw this up at the grand jury I had not remembered what the letter was like.

Q But you did indicate in your testimony here that you saw the letter?

A I saw the letter.

Q In '72 or '73?

A Correct.

Q Well, you know, do you not, from the testimony before that this letter was the letter from Mr. Kolatch's files, is that right, that was the legal letter sent to the Hillel School with the stock, transferred to the Hillel School with the stock, is that right?

A Yes.

Q Did you go out to the school and see the letter in '72 or '73?

A No.

Q Where did you see it in '72 or '73?

A Marty Frank may have had a copy. I may have picked it -up from Marty Frank. I just have no recollection of where I may have seen it.

Q But that letter is addressed to the Hillel School, is it not?

A Yes, sir.

Q You heard Mr. Kolatch testify this letter came out of his files, did you not?

A I understand that.

Q But your testimony is you saw it in '72, in other words, between '69 and --

A My testimony is I did see it. I believe it was at the time I went for my audit and that's when I believe I saw it.

Q My question is, did you go to the Hillel School to see it?

A No, I did not.

Q Did you ask Marty Frank to get the letter from the Hillel School so you could look at it?

A I don't think so. I just have no recollection of this even taking place. I have no idea how I would have seen it. I can't remember.

Q Have you ever given a contribution of over $300,000 to any charity in your life?

MR. KATZ: Objection, your Honor.

THE COURT: Wait a minute.

Over what did you say?

MR. LITTLEFIELD: I said over -- I said have you ever given a contribution of over $300,000? If you look in the return, the amount of the contribution before you take the 25 per cent off is well over $300,000.

THE COURT: All right. I will let him answer the question:

"Did you ever make a charitable contribution."

Have you made a charitable contribution in the past?

THE WITNESS: Yes, I have.

THE COURT: Okay.

What is the largest charitable contribution you may have made?

THE WITNESS: Prior to that maybe $500.

Q So this was a significant contribution in terms of your records of giving charity, was it not?

A Yes, sir.

Q And yet you made no recollection when you made it?

A This was made in 1969, Mr. Littlefield.

Q How do you know that if you have no specific recollection?

A Because my attorney handled it for me and at

that time I believe that he wouldn't advise me to do something unless it was absolutely legal.

Q And you heard your attorney testify here?

A This is after the fact.

Q I see, but aside from what -- your testimony is that at the time in '69 your attorney said it had been done in '69. Is your testimony --

A No.

MR. BERGER: Judge, he is arguing with the wtness at this point.

THE COURT: I think it is argumentative. I think Mr. Littlefield asked if it was prior to 1969.

And I take it this was in 1969?

THE WITNESS: That's to the best of my recollection, your Honor. That's when it happened, right.

Q What other charities did you contribute to other than the Hillel School?

A The Cancer Society. Numerous organizations.

Q Is there a temple in Riverdale to which you belong?

A Yes.

Q Have you ever given a contribution to the temple?

A Yes.

Q You knew nothing about the Hillel School?

A No, sir.

Q You had no contact with the Hillel School of any kind?

A No.

Q You never heard of the Hillel School before, before Martin Frank told you about it?

A No, I don't believe I ever heard ot it before.

Q And yet you gave your contribution, whatever it was, we'll say $287,000, to the Hillel School which you never heard of before, is that right?

A That's correct.

Q Are there any other tax exempt organizations which you could have given a contribution to with which you had some contact?

A Yes.

Q Have you ever given any other contribution to any organization with which you had no contact and no knowledge about prior to someone telling you about it?

A Not that I can think of.

Q You said you had conversations with Mr. Frank in connection with this, is that right?

A Yes.

Q When were the conversations?

A Some time in 1969.

Q How do you know that?

A Because that's when I believe it happened, in 1969.

Q There is no event which would trigger your recollection as to when your conversations with Mr. Frank were?

A I can't think of anything specifically.

MR. BERGER: Your Honor, this has been asked and answered completely.

Q What did Mr. Frank say in connection with the contribution, if you recall?

A I think I answered that already, Mr. --

THE COURT: You can answer it again.

A He mentioned that the Hillel School -- he mentioned making a contribution, securities. He mentioned -- I believe he mentioned the tax benefit at the time. That was basically it.

Q That was it? So what did you do? What did you do next after the conversation?

A I don't remember.

Q You had your conversation at which you said he mentioned tax benefits and the Hillel School. What did you do after that conversation, if anything? What

was the next step in these series of events?

A I'm sorry, I misunderstood you. I don't know whether you meant did I get up and leave or what. Some time after that I spoke to Mr. Frank again and, you know, everything was arranged.

Q What did you do next?

A Securities were delivered to Mr. Frank.

Q And where were the securities when they were delivered to Mr. Frank?

A I'm sorry, I don't understand.

Q Where did they come from when they were delivered to Mr. Frank? Were they in your office?

A They could have been in my office, they could have been from my home, they could have been from a broker. I have no recollection of how it even happened.

Q At the time you delivered them to Mr. Frank, do you know whether they were endorsed or not?

A I can't remember that.

Q And when did you sign this letter or sign what you said was a blank piece of paper?

A In 1969.

Q How do you know that?

A Because that's when I believe I did it.

Q And did you sign the letter when you first --

this blank paper when you first had the conversation with Frank about tax benefits and the Hillel School or when stock was delivered to Frank?

A It was at a second meeting or a third meeting, and I don't know if this was -- it may have been at the same time as the delivery of the securities, it may not. I don't know. It could have been. It was a subsequent meeting from the first.

Q You don't know when, whether it was the first or --

A No, I don't, sir.

Q After you had signed the blank piece of paper and the stock was delivered to Mr. Frank, what was the next event that occurred in connection with your $287,000 contribution to the Hillel School?

A I don't know what you mean by what was the next event that occurred.

Q Well, what happened next? Did you talk to Mr. Frank about how it was going? Did you get a letter from the Hillel School? What happened?

A I didn't get anything direct from the school. I believe I got a letter from Mr. Frank at a later date when I needed it for tax purposes.

Q You didn't receive anything back from the

Hillel School?

A I don't believe so.

Q I show you what is Government's Exhibit 1-A. First, let me ask you if you recognize Government's Exhibit 1 for identification?

A (Examining) Yes, sir.

Q What is it?

A It's my tax return for 1969.

Q And has your signature on the bottom?

A Yes, sir.

Q And you signed this tax return?

A Yes, sir.

Q From the Bronx where [redacted] lived?

A Yes, sir.

Q And, in fact, this is the envelope in which it was mailed. Is that your handwriting on the envelope?

A That's my handwriting on the envelope.

Q By the way, the return was filed in August, 1970, right? So you asked for two extensions?

A That's correct.

Q Do you remember why you asked for the extensions?

A No, I don't.

Q You have no recollection?

A No.

Q Now, was there attached to the return, if you recall, a copy of the letter to you from the Hillel School?

A Yes, there was.

Q And where did that letter come from?

A I believe this is the letter that came from Martin Frank.

Q So that although the letter is addressed to you it is your testimony it wasn't mailed to you, is that right?

A They probably sent it to him and I picked it up. That's to the best of my recollection, that's what happened, Mr. Littlefield.

Q You don't recall specifically for sure whether you got the letter or whether Mr. Frank got the letter?

A No, I don't. I believe Mr. Frank got the letter.

Q And when -- so then what happened? Between the time you took the certificate and the time you prepared your returns, you didn't have any conversation with Mr. Frank about the contribution?

A It's something that was done. It's a fait

accompli and we discussed other business and I was traveling around. I was making trips out of state on the average of once every three weeks that year, or maybe once every two weeks, and I was just too busy to bother with something like this. He was my attorney. He was competent and he was able to handle it.

Q You were too busy to bother with details of a $287,000 -- $286,500 --

A I was --

MR. BERGER: Your Honor, he is arguing with the witness.

THE COURT: Hold it. Relax.

The stock was worth $287,000. I think you used the term "unregistered stock."

THE WITNESS: Yes, your Honor, it's paper.

THE COURT: From your point of view that's paper?

THE WITNESS: Yes, sir.

THE COURT: Okay.

MR. BERGER: If your Honor please, would you please let Mr. Littlefield refrain from arguing and badgering the witness?

THE COURT: No, I am not going -- I know what happens in the heat of a trial and I know he won't try

to badger the witness, but I think it is getting a little argumentative.

Go ahead, Mr. Littlefield.

Q At the time you say you made a contribution, did you have any idea how much it was going to be worth -- how much you were going to take on your tax return for it?

A I didn't have an exact figure in mind.

Q Did you have any idea?

A It had to be substantial, but I never -- I just never bothered to figure it out.

Q Well between the time you delivered the stock and when you got ready to prepare the tax returns with your accountant, you nad no further conversations with Mr. Frank or with anyone about the contributions?

A Look, I saw Mr. Frank on the average of maybe once a week or in between trips. I don't remember if I had conversations. I don't think so. Maybe I did. It's possible.

Q Did you ask him whether he had given the stock to the Hillel School?

A No, he said he did it, and that was it.

Q When did he say that, after you gave him the stock?

A No, probably at the time he got -- yes, I presume so.

Q Oh, so you do remember that after you delivered the stock you had a conversation with Mr. Frank in which he said he had given the stock to the Hillel School?

A He said it's done. When I walk into an attorney's office and ask for a contract to be drawn up and he says it's done, it's done and that's it. I take his word that he does it.

Q Did you ask how much it was going to be worth on your tax returns?

A I don't think so. Not to my recollection, Mr. Littlefield.

Q So then what happened next? You went to the accountant to prepare your tax returns, is that right? And you had no conversations with Mr. Frank as to how much the deduction was you were going to be able to take?

A I can't remember any conversations as to the amount of the contribution. I can't remember having that conversation with Mr. Frank.

Q Did you have an idea when you went to Mr. Charles' office how much you were going to take for the

deduction?

A No, there had to be some sort of an adjustment because it was unregistered shares, so I had no pre-conceived idea as to what the exact amount was.

Q Did you have any idea how much you were going to claim for each share of the 116,667 shares?

A I did not have a previous idea. Subsequently I had to find out what the price was based on the letter that the school got and I looked up the prices and based on that I think it was a formula of a 25 per cent discount or block of unregistered shares. I believe these were the figures I used, Mr. Littlefield.

Q At the time were you aware of what the history was of the Salem Electronics stock in terms of value back in '69 and '70?

A I had a fairly good idea.

Q I beg your pardon?

A I had a fairly good idea, yes.

Q What was that idea? When you went to your accountant what was the idea about what happened to rhe stock?

A Well, the stock had gone up and it had gone down.

Q I am talking about the end of '69 and '70.

What happened to the stock, do you know?

A I think at the end of -- end of '70?

At the end of '70 --

Q At the end of '69 and throughout '70.

A '69 the high was about 36 or 33 and the end of '70 the low was about $1, I believe.

Q Well, now, between the dates that you claimed on the tax returns that you made your contribution and 1970 you were then aware that the stock had gone way down, is that right?

A Yes, sir.

(Continued on next page.)

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Q From a high in the 30s?

A I'm sorry, would you repeat that question once more? I'm having a problem hearing you from there. I don't know why.

Q Were you aware, when you went to your accountant, that, that between May 26, 1969, the time you went to your accountant, the stock had gone way down in value?

A Yes, sir.

Q But your intention was, when you went to your broker, when you went to your accountant, to take the valuation when it was up here at 26, is that right?

A No, that wasn't my decision. That was --

Q No, did you know when you went to the broker -- I think you just testified you did -- you had an idea that the stock had been going in the vicinity of 25 to 30 on May 26th which was what the date was on the letter.

A Yes, sir.

Q You knew that when you went to the broker.

A About that, yes, sir.

Q Now, being aware, as you were, of the decline, the sharp decline that had been involved in the stock, did you think when you went to your broker that you should confirm in any way with Mr. Frank or anyone that, in fact, the contribution actually had been made on May 26, 1969?

A I had no reason to.

Q You went by the letter alone, is that right?

A Yes, sir.

Q And you say -- where did you get the letter?

A I believe I got the letter from Mr. Frank.

Q And you did not get it in the mail?

A I don't think so.

Q What happened in your conversation with the accountant? You told him you had this contribution. You showed him the letter. Do you remember his reaction?

A Surprise.

Q And then what happened?

A We tried to work out a calculation.

Q Were you able to persuade him that there was nothing to be surprised about?

A Well, after we had the discussion on the tax benefits, I feel as though he felt comfortable with it.

Q Pardon me?

A I felt he felt comfortable with it.

Q Did he ask you about the date other than what was on the letter?

A It wasn't even discussed.

Q You just had the letter and that was it?

A Yes.

Q There came a time that there was an audit of your '69 tax return, is that right, in '72 or '73?

A That's correct.

Q In connection with the audit, did you do anything to check as to whether the dates on the letter had been accurate? Did you ask Mr. Frank whether the dates on the letter had been accurate?

A No.

Q Did you call up the school to find out whether the dates on the letter had been accurate?

A No.

Q There came a time when Mr. Frank was indicted for backdating his own contributions. At that time did you ask Mr. Frank or did you contact the Hillel School to see if it is possible that your contributions were backdated?

A I did not.

Q Were you concerned about that at all?

A Reading about the contribution to the Hillel School I was concerned, but Mr. Frank was only indicted; he wasn't convicted at that time.

Q You said you had an account at Continental Securities at some time, is that right?

A That's right.

Q Do you know when that was?

A I have no idea.

Q Was that the reason that you used Continental Securities to guarantee your signature?

A Look, I don't even know if I used Continental Securities to guarantee my signature. You know, I'm still not clear about how that took place, as far as the guarantee was. I was a broker. I could have had my own firm guarantee it or I could have walked down to my own bank, the same bank, Chemical Bank, which has my signature on file, and they would have guaranteed it.

Q Why didn't you do that?

A I don't know. I just don't understand how this whole thing took place.

Q Yet your father worked for Continental Securtieis, is that right?

A That's correct.

Q You had an account there?

A I had an account there at some time. When it was I really don't know.

Q Are you testifying that you don't know how or whether it was through your father or yourself that the stock went to Continental Securities?

A My father may not have had nothing to do with it.

Q Who had something to do with it going to Continental Securities?

A If it went to Continental Securities it would have been me, but I'm not saying that I sent it to Continental. I'm trying to remember how it got there. Maybe the firm I was with sent it there. I just don't remember, sir.

Q Did Continental have your signature on file in May of '69?

A I don't know.

Q If they didn't have your signature on file how would they have guaranteed it short of your actually being there?

A Again, I don't know.

Q What other ways -- you're a broker; have you eever guaranteed signatures before?

A Yes.

Q For L. B. Meadows you have done that?

A I'd like to -- can I explain this, sir, because it involves securities. It just involves securities, and the terminology we use in the market. There are times when a broker, such as Continental, who is not a

member of the New York Stock Exchange, who may have difficulty finding a bank to guarantee; now, the bank guarantees the signature not of Continental, but they guarantee the signature of, in this particular case, a Mr. Weisberger and there are times there is a broker accommodation, where a broker would come to me, because he is new in the business or something; I would arrange for him to have my bank guarantee a signature. That could -- that is one way.

There are different ways to go about it. There are firms that have relationships strictly with member firms and have nothing but member firms --

MR. LITTLEFIELD: Your Honor, may I ask the question which was:

Q Have you ever endorsed signatures -- have you ever guaranteed signatures, either with L. B. Meadows or your own securities firi?

A Oh, yes; yes, yes.

Q What are the conditions under which you guarantee somebody's signature?

A I recognize his signature.

Q Either it is on file or you have seen it and recognize it?

A Or I have seen it or I know the person; I have done it as an accommodation for people I know.

Q As for Continental Securities, then, for them to have guaranteed your signature, they would have had to have known you or had it on file or else you would have them sign it in your presence, right? Yes or no, if you know.

MR. BERGER: Objection. I don't think that question calls for a yes or no answer.

THE COURT: You can answer that question.

(Continued on next page.)

A If Mr. Weisberger knew knew me and I called him up on the phone and he said he didn't, and this is all hypothetical, and I said, "Do me a favor; I am sending over a stock certificate." He may not have my thing on file, but he'd still guarantee it as an accommodation. Brokers do this for e h other.

Q Is that how it happened in this case?

A I don't think so. I just can't remember it. It may be when I gave the certificate to Mr. Frank it was just my signature and maybe he knew Continental and sent it down to him. I don't know how it happened.

Q You heard Mr. Weisberger testify he didn't know Martin Frank.

A I sure did, but then again I also --

Q Finally, your testimony is you have no recollection of how it was that Continental Securities got on that, endorsed your signature, guaranteed your signature?

A That's correct, sir. That's correct.

Q And do you recall in your conversation with Mr. Charles telling him that you expected perhaps to have large earnings in the future and that was why this large contribution; you might be able to use it all?

A I believe that was discussed.

Q Were you familiar with the fact that only 30 per

cent of your income could be reduced by virtue of the charitable contributions?

A I knew it was a percentage.

Q And you did discuss with Mr. Charles the fact that there might be in the later years, if you carry-over whatever was left over of the contributions, if your income went way out, you could take advantage take advantage of all the stock?

A I don't know if it was discussed at that time. It may have been mentioned. I am not denying it. It's possible. I just have no real recollection of it.

Q In other words, the securities industry at that time was very volatile, up and down?

A Extremely volatile.

Q Sometimes you might make a lot of money one year and no money the next year?

A In those days it looked as though everybody was going to make money forever.

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Q Were you and Mr. Dresner in business at one time?

A No.

Q Have you ever been related in any business relationship?

A I know him as a broker, we have done trades together. Mr. Dresner used to be a neighbor of mine many, many years ago, about 16, 17 years ago.

Q When you went to Mr. Charles, did you remember then when you gave the gift?

A Didn't even think about it.

Q In 1970, when you went to Mr. Charles to fill out your tax return, did you remember when you gave the gift?

A I didn't think about it. I had no recollection of even thinking about it.

Q When did you go to Mr. Charles, how far before the return was filed on August 15, 1970?

A Maybe a month or two before, something like that.

Q At that time, your testimony is now that at that time you didn't even think about when you made the gift?

A I used the letter from the charity as a reference, and that was the date.

Q But you had no other recollection aside from that?

A That is the only thing.

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Q Only six months after, six or seven months into the year 1970?

A But you are asking me to remember what I remembered in 1970 from 1969. I can't remember.

Q So you don't remember now whether in 1970 when your memory was better about your 1969 contribution, whether it was better than it is now?

A I wouldn't even know how to answer that.

Q I think that is answerable.

THE COURT: Never mind, go ahead.

MR. LITTLEFIELD: May I have a moment, your Honor?

THE COURT: Surely.

(Pause.)

MR. LITTLEFIELD: I have no further questions, your Honor.

THE COURT: Any other questions?

REDIRECT EXAMINATION

BY MR. BERGER:

Q Mr. Levine, you testified that you traveled extensively in 1970, is that correct?

A That is correct.

Q Now, could that have been in explanation --

THE COURT: No, he traveled extensively.

Q Did you ask for the extensions to file your income tax return or did your accountant ask?

A It was probably me. I mean, I probably indicated to him that I needed extensions to gather whatever information or papers I needed.

Q Did you file a formal extension request?

A Yes, my accountant filed it.

Q Your accountant filed it?

A That is right.

Q Do you remember when he filled it, was it before April 15?

A It had to be prior to April 15. I assume that is when.

Q Were you present to your recollection, to fill out the extension request?

A I could have signed it in his office or at home, but I did file for the extension.

Q You were asked on cross-examination about The Hillel letter and The Hillel letter which you testified you saw in 1972 on an audit, is that correct?

A I believe that is when.

Q At the time of this audit, was this done by the IRS?

A Yes.

Q Did they show you an original or a copy of The Hillel letter?

THE COURT: If you recall.

THE WITNESS: No, they didn't -- first of all, I didn't handle it, my attorney appeared at the audit.

THE COURT: When you say you saw the letter, do you know whether you saw the original or a copy?

THE WITNESS: I have no idea.

Q This is the letter referred to, I believe it is Government's Exhibit 7.

At the time of that audit, did they show you this original?

A No, I couldn't -- this is The Hillel letter, they didn't show me that.

Q On cross-examination the government showed you a copy of their Exhibit 8, if I remember correctly, this stock certificate?

A Yes, sir.

Q Do you want to take a look at it? The government showed you this.

With reference to this exhibit, did you want to make a statement of any kind, an additional statement?

MR. LITTLEFIELD: Objection, your Honor. Does he want to make a statement now?

THE COURT: There is an objection to the form of the question. You were shown this before?

THE WITNESS: Yes, but I think I understand. I would like to again go back to some knowledge I may have about this securities business, if I may.

THE COURT: This is only in relation to this.

THE WITNESS: My signature has been on file since 1959, I believe, or all the way through in 1972 or 1973 with the Chemical Bank. If a stock certificate --

THE COURT: Wait a minute. You stated that your signature has been on file. I don't think we need to get into theprocess of the Chemical Bank. You indicated your signature was on file there.

Q Do you know which branch your signature was on file at?

A Three branches, the Pine Street branch I have used. I don't remember the dates, which was which.

They had a signature card of mine in 67 Broad and a signature card of mine up in Riverdale Avenue in the Bronx.

MR. BERGER: Thank you very much.

THE COURT: All right, any questions?

MR. LITTLEFIELD: I have no further questions.

THE COURT: All right, thank you, you are excused.

(Witness excused.)

* * *

AFTERNOON SESSION

(The following took place in the robing room at 2.05 p.m.)

THE COURT: I have a note from the jury which reads:

"Five tax returns."

Those are exhibits.

"Acknowledgment letter from the Hillel School. Minutes of the Hillel School.

"The pink slip chart high and low."

I think that is wrong.

"Transcript of yesterday."

You fellows were using a transcript summary, were you?

What is the transcript yesterday, what did you read?

MR. LITTLEFIELD: Mr. Levine's testimony.

THE COURT: I think I will have to call them out on that and see what they want. I can't give them a transcript of yesterday.

MR. KATZ: Probably some excerpts of testimony.

THE COURT: I better call them in and ask them what they mean by that and in the meantime collect those exhibits and we can give them to them when they come in.

(In open court.)

MR. LITTLEFIELD: Tax returns are Exhibits 1 through 6.

THE COURT: The minutes of the Hillel School?

MR. LITTLEFIELD: Exhibit 10.

THE COURT: And the chart is Exhibit 18, is it?

MR. LITTLEFIELD: 15, your Honor.

The acknowledgment letter is Exhibit 1-A and is included in the tax return and I will also give them a carbon which is 1-B.

THE COURT: All right.

(Jury returned to the courtroom at 2.10 p.m.)

THE COURT: Good afternoon, ladies and gentlemen.

I received your note which reads:

"Five tax returns.

"Acknowledgment letter from Hillel School.

Minutes of Hillel School.

"Pink slip chart, high and low.

"Transcript of yesterday."

The five tax returns are Exhibits 1 through 6. They will be made available to you.

The acknowledgment letter from the Hillel School is attached to the tax return, the 1969 one and also I think a copy is 1-A and 1-B and we will send that in.

The minutes of the Hillel School I believe is Exhibit 10 and the pink slip chart I think is the pink sheet chart and that will be sent in to you.

Finally, the thing that I am a little puzzled about is the transcript of yesterday. That was I suppose hundreds of pages.

Is there anything in particular you want because the procedure on that is should you need anything on that, the reporter will read it back to you.

JUROR NO. 5: Certain testimony given yesterday.

THE COURT: All of it or part?

JUROR NO. 5: Part.

THE COURT: What part?

JUROR NO. 5: Testimony given by Mr. Weisberger is one that is important to us or to me.

THE COURT: The testimony of Weisberger.

JUROR NO. 5: Yes.

THE COURT: Is that the thing you were interested in from yesterday?

JUROR NO. 5: Yes and a few others. We are

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discussing it.

THE COURT: The procedure on that is should you want anything it is going to be read back to you by the reporter. The procedure doesn't provide, because it is pretty confusing to get these big books of testimony but if you would like to hear the testimony of Mr. Weisberger, is that right?

JUROR NO. 5: Yes, sir.

THE COURT: All right.

MR. LITTLEFIELD: That is page 287, your Honor.

THE COURT: Running through 315.

JUROR NO. 5: It is a part, it is about --

THE COURT: I think it might be helpful if you pick up the exhibits now and think a little more about that and let me know what part you want, unless you want it all. That would be the better way to do it.

JUROR NO. 5: May I approach and talk to you or say it out now?

THE COURT: Just say it out loud. If you know you can tell me now. If you don't know maybe you --

JUROR NO. 5: The point I wanted to know is whether Mr. Weisberger stated that he knew the lawyer of

Mr. Levine.

THE COURT: All right, I think maybe we could answer that.

Anybody remember the testimony on that?

MR. LITTLEFIELD: That is page 292, line 22.

THE COURT: Page 292, Mr. Weisberger was asked and this was by Mr. Littlefield:

"Now, do you know Martin Frank?

"A No."

That is probably the testimony.

JUROR NO. 5: Thank you, your Honor

THE COURT: All right.

Is that what you wanted?

JUROR NO. 5: Yes.

THE COURT: All right.

Ladies and gentlemen, why don't you don't retire and take these exhibits and the chart will be brought in to you by the deputy since it is a big chart.

(Jury left the courtroom at 2.20 p.m.)

THE COURT: I will ask Mr. Wallace to mark the jury note as a Court exhibit.

Do you want these requests to charge marked as Court exhibits?

MR. LITTLEFIELD: Not necessarily.

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THE COURT: You didn't take any exception so I don't suppose it makes any difference.

MR. LITTLFIELD: I don't think it is necessary. It is part of the record of the case.

(Jury note marked as Court Exhibit 2.)

xx (Note received from jury at 3.10 p.m. reading:)

"Letter to Hillel School transmitting stock of Salem Electronics."

(Jury note marked as Court's Exhibit 3.)

xx (Exhibit sent to jury.)

(The following took place in the robing room, 3.30 p.m.)

THE COURT: There are two kinds of handwriting on this note here.

"1. During Kolatch's testimony how did he (Kolatch) say he arrived at the date of May 26, 1969 for dating the letter?"

Then another note here:

"With reference to the restricted stock certificate at what point and under what conditions would or could it have been negotiable and therefore valuable to Mr. Levine?"

MR. BERGER: There is testimony to this effect

I think.

THE COURT: As I recall the Kolatch testimony it was that he would date the acknowledgment letter a few days after the date of the gift letter.

MR. LITTLEFIELD: That is right.

MR. KATZ: But at the direction of Mr. Frank.

THE COURT: A few days after the gift letter.

MR. LITTLEFIELD: The acknowledgment was dated a few days after the letter of transmittal.

THE COURT: That is as I recall it.

The second one about the restricted stock certificate, do you think there was some testimony about that?

MR. LITTLEFIELD: Only when it was endorsed and the endorsement was guaranteed either by a member firm or by a bank and in this case it was done by a bank.

MR. BERGER: No, your Honor. I don't know at this point what is meant by negotiable.

THE COURT: Negotiable means could it be sold or given. That was all brought out, wasn't it?

MR. LITTLEFIELD: Only under those conditions.

THE COURT: Whose testimony was that?

MR. LITTLEFIELD: The first testimony was

Merendino of the Chemical Bank who said that the only way the stock is negotiable is if it is endorsed by the man to whom the stock is made out and that signature is guaranteed either by a member firm or by a bank.

That testimony was repeated also by Weisberger and by Frank and Kolatch.

MR. BERGER: We take issue with that.

THE COURT: What do you say?

MR. BERGER: We say that there is a reference to restricted stock. Restricted stock, what do they mean by negotiable?

THE COURT: You say there is a reference.

MR. BERGER: A reference to what restricted stock is and when it is marketable. Negotiable and marketable are synonymous. The fact that --

THE COURT: This doesn't say that. They have a reference to restricted stock certificate, not talking about restricted stock in general. They are talking about the certificate that says on the certificate which they have it is restricted, isn't that correct?

MR. LITTLEFIELD: That is correct. They have not got the stock certificate in the jury room. It does say restricted.

MR. KATZ: But negotiable, it has to be endorsed

and delivery and I think your question just means value. They didn't say value.

THE COURT: Merendino was testifying about this stock. If it is endorsed --

MR. KATZ: There has to be a delivery, your Honor, in addition to that.

THE COURT: You are getting involved in legal formalities. It is negotiable once it is endorsed and the signature is guaranteed, it is in negotiable form. That is true, that it has got to be delivered to somebody.

MR. BERGER: But the answer to the question, it is a general question. He is referring to generalities not to this certificate or any restricted stock.

THE COURT: Was there any testimony about restricted stock, what the provisions would be? I seem to recall some reference, purchased for investment.

MR. LITTLEFIELD: A number of witnesses talked about it. Frank said when he first discussed it with Levine --

THE COURT: What I will do, gentlemen, on the first one I will tell them that I recall the testimony and it is their recollection that controls, that Kolatch testified that it was his practice to date the letter a

few days after the incoming letter. That is quite clear.

On the second one I will read this piece of Mr. Merendino's testimony and see if that is what they are interested in and, if not, they can let me know.

MR. BERGER: What I would ask at this point is any reference to your recollection about negotiability of restricted stock?

THE COURT: Just vaguely I seem to remember something about purchased for investment.

I think what I will do is ask the jury does this cover what their inquiry is and what further do they want.

MR. LITTLEFIELD: There is reference to the original letter and the letter of transmittal and the letter of acknowledgment follows the letter of transmittal.

THE COURT: Let me try that out, gentlemen, and see how we get along.

(Jury note marked as Court Exhibit 4.)

(Jury returned to the courtroom at 3.40 p.m.)

THE COURT: Good afternoon again, ladies and gentlemen.

I have received your note in which you ask:

"1. ring Kolatch's testimony how did he (Kolatch) say he arrived at the date of May 26, 1969 for dagint the letter?"

On that I recall Mr. Kolatch's testimony and of course it is your recollection that controls, he testified that under this plan he would date the letter of acknowledgment of the gift a few days after the date on the transmittal later. As I recall that was his testimony.

Now, secondly:

"With reference to the restricted stock certificate, at what point under what conditions would it or could it have become negotiable and therefore valuable to Mr. Levine?"

On that it might help if I quote from the transcript here, the testimony of Mr. Merendino. You remember he was the man from the Chemical Bank who signed the guarantee on behalf of the Chemical Bank.

On page 211 of the transcript appears the following:

"Q With reference to the back does your signature appear on the back?

"A Yes, sir.

"Q Where is that?

"A The lower guarantee signature.

"Q What appears above that in terms of the stamp?

"A My stamp.

"Q Yes?

"A It is a signature guarantee stamp by the Chemical Bank and I sign on that as an authorized signer for the Chemical Bank.

"Q Can you describe what this process is on the back with three signatures?

"A Okay. Working from the bottom up, I guarantee the signature of Mr. Samuel Weisberger who is the individual who guaranteed under the name of Continental Securities Company and who in turn guaranteed Mr. Jack Levine, Jack Levine's signature.

"Q What does this guaranteeing process mean? What is the significance of that? Why is it done?

"A In order to make a stock certificate negotiable either for sale or transfer the owner must have the certificate guaranteed either by a member firm or a bank.

"Q What do you mean by a member firm?

"A This is a firm such as Merrill Lynch that can guarantee --

"THE COURT: When you talk about a member firm are you referring to being a member of the New York Stock Exchange?

"THE WITNESS: Yes, of the New York Stock Exchange.

"Q Is Chemical Bank a national bank; in other words, your bank can guarantee?

"A Yes.

"Q Aside from the endorsing of the back of the certificate to make it negotiable, is there any document, any other document that could also make the certificate negotiable?

"A Yes, quite often the stock powers are used in lieu of the back of the certificate being signed."

I don't think that applies because we haven't a stock power.

Does that answer the question about the stock being negotiable?

JUROR NO. 3: That causes me to be more confused. The stock as we understand it was restricted.

THE COURT: That is right.

JUROR NO. 3: Now, does that mean and as far as I understand restricted stock doesn't it have to be held for a certain period of time?

THE COURT: Well, I don't know as to any time. One year maybe.

JUROR NO. 3: However, Mr. Merendino said that once the signature is guaranteed it is negotiable. Therefore, stock could be restricted stock and might be presented for a guarantee a week after it is given to somebody and be negotiable?

THE COURT: As restricted stock.

Do you have the stock certificate in the jury room?

No. Because I think if you had it you would observe on the stock certificate also a stamp?

JUROR NO. 3: Not as ordinary stock.

THE COURT: That is right.

JUROR NO. 10: The point is restricted stock could be sold and a profit be realized at that point, not knowing enough about restricted stock. When could it be valuable to somebody?

THE COURT: I think I can answer that this way. Stock always has some value. Restricted stock has less value.

If you have restricted stock there are proceedings you can take to get it unrestricted if you want to. As I understand it, restricted stock is really purchasing it for investment.

Stock that you purchase for investment, you could give it to somebody else who is alsotaking it for investment. There is no problem on that.

JUROR NO. 10: The point in Mr. Kolatch's testimony, what we are trying to derive was who directed Mr. Kolatch to backdate the letter.

THE COURT: I recall on that there was testimony right in the beginning of the trial, I think from Mr. Martin Frank who testified about his conversations with Mr. Kolatch as to how they could arrange for a contribution to be made to the Hillel School and that the person making the gift could use any date they want to. Do you remember that?

That is the background on that and when Mr. Kolatch himself testified as I recall he indicated under that arrangement what they did was to date the letter of acknowledgment a few days after the date of the transmittal letter.

JUROR NO. 10: Mr. Kolatch got his direction from Mr. Frank to backdate the letter.

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THE COURT: It is up to you to decide whether he got his direction from Mr. Frank or whether that was the arrangement by which contributions were made to the Hillel School. I think you can all decide that better than I can.

Does that answer the question?

JUROR NO. 12: Getting back to the unrestricted stock, at what point is it negotiable? I don't know.

THE COURT: It becomes negotiable when the process is carried out whether restricted or unrestricted, it becomes negotiable. That is, you can transfer it but the fellow who gets the certificate would have that stamp ont it.

JUROR NO. 12: If I own a certificate of unregistered stock and move it into the marketplace and get whatever price there is available to me I will do that and probably lose something on it but I can do that.

THE COURT: It depends on how you do it. If it is signed and you give it to a friend of yours or someone else he can have that stock for investment and here it is, if he takes it he is going to take it on the same restriction as you do.

MR. BERGER: May I approach the side bar one

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second?

THE COURT: All right.

(At the side bar.)

MR. BERGER: Your Honor, I am not going to try to contravene you in any way but I have been practicing securities laws for many years and there are definite laws and rules on this and they are very confused.

THE COURT: There is no evidence. I can't tell them that.

MR. LITTLEFIELD: I think if we have an opportunity to look there is something in evidence, something on restricted stock.

THE COURT: All right.

(In open court.)

THE COURT: The lawyers think there may be something in the minutes on restricted stock and wny don't you go back and continue deliberations and when we find it we will call you back in.

(Jury left the courtroom at 3.50 p.m.)

MR. BERGER: Your Honor, is the restricted legend there?

THE COURT: Do you want me to give them this? I will send in the exhibit so they can read it.

MR. BERGER: Can we look at it?

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THE COURT: It reads:

"The shares represented by this certificate have not been registered under the Securities Act of 1933. The shares have been acquired for investment and may not be sold, transferred, pledged or hypothecated in the absence of an effective registration statement for the shares under the Securities Act of 1933 or an opinion of counsel of the company that registration is not required under the Act."

MR. LITTLEFIELD: Restricted stock can clearly be transferred.

MR. BERGER: The legend is quite clear.

MR. LITTLEFIELD: On the question, your Honor, it would seem to indicate that restricted stock can never be transferred to anybody.

THE COURT: No, on the opinion of counsel.

MR. BERGER: This restricted legend speaks for itself and should be read to them.

MR. LITTLEFIELD: Let me see if I can find anything in the transcript.

Page 145, Mr. Kolatch does give ome indication of this. line 7.

MR. KATZ: Later on down to line 15.

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MR. LITTLEFIELD: I mean the whole page.

MR. KATZ: That the stock was restricted and was not able to sell it immediately.

THE COURT: All right. Beginning on line 10, is that where you like to start?

MR. LITTLEFIELD: Line 7, your Honor.

THE COURT: How far?

Bottom of the page, line 23.

THE COURT: Is that agreeable?

MR. KATZ: I object, your Honor, because it talks about the value of the stock and not the ability to transfer it. I think you should only go to line 18 because that answers the question. It says that the stock was restricted and we were not able to sell it immediately and the legend supports that testimony.

THE COURT: All right, I will read it to line 23.

Bring back the jury.

MR. LITTLEFIELD: It is possible for me to have restricted stock and sell it to my friend.

THE COURT: I am aware of that. You can give it to your wife or somebody else and take it for investment, there is no problem with that. I already told them that.

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(Jury returned to the courtroom at 4.00 p.m.)

THE COURT: The lawyers have been working on this and I have two things I might add to help you a bit.

First of all it is Exhibit No. 8, which is the stock certificate itself and I am going to send that in to you so you will have it and the stamp with respect to restricted stock comes from there.

The stamp reads:

"The shares represented by this certificate have not been registered under the Securities Act of 1933. The shares have been acquired for investment and may not be sold, transferred, pledged or hypothecated in the absenc of an effective registration statement for the shares under the Securities Act of 1933 or an opinion of counsel of the company that registration is not required under said Act."

That is what the stamp says. They have that and the testimony of Mr. Kolatch at page 145 appears the following questions and answers:

"Q Referring to Government's Exhibit 8, the stock certificate, when you received it was it in the same form as it is now?

"A Yes, it is the actual stock. It has

the stock power on the back plus signed signature guarantee, so that all the stock that was delivered to us either had stock powers accompanying it or the actual stock itself signed.

"Q Why was that?

"A So that we could market the stock. Otherwise it had no value to us unless we could do something with it, except that this stock was restricted stock and we were not able to sell this immediately.

"Q Did you keep it in possession of the school?

"A I held it, actually, in the possession of my own office for a period of time. I ultimately tried to do something with it, but the value of the stock was almost nil. We did not do anything with the stock."

I give you that and will send the exhibit in to you.

JUROR NO. 10: At the time he received the stock could he sell the stock at that time?

THE COURT: From the stamp, if he got an opinion of counsel of this company that he could, he could have done so or he could have gotten the Salem Company to file

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a registration statement. There are two possibilities there.

Of course, I think it would be fair to say and it is true that if you have some restricted stock and you told a friend of yours that this is restricted stock, do you want it, in a private transaction, and he said he would like it you could transfer this stock to him because it would be purely a private transaction for investment, so long as you told him that he couldn't sell it through a broker.

JUROR NO. 11: The point is the stock can be disposed of under certain circumstances.

THE COURT: That is right. You are quite right. It becomes negotiable in that point of view subject only to the stamp.

JUROR NO. 3: But it cannot be converted into cash.

THE COURT: It could under those circumstances.

Supposing if you have a private transaction not involving a broker and you say to somebody you have this stock and it is restricted, there is no registration statement and I want to sell it and it might be good for somebody later on, when you pay for the stock and transfer it there is nothing illegal so long as you are clear that

you know what you are doing and buying it for investment.

(The jury left the courtroom at 4.05 p.m.)

MR. BERGER: If your Honor please, at this time we are going to take exception to any of the colloquy or any of the discussions had with the jury and the Court.

THE COURT: You have an exception.

MR. BERGER: Thank you, your Honor.

THE COURT: It might be worth considering whether the parties shouldn't enter into some sort of stipulation in which we can probably work it out in a way that will clarify all of this and put it in writing.

There is no harm in your talking to counsel to see if he wants to do it. We will see what the jury does in the meantime. Go ahead.

I can see where there is a little confusion about that because of it being restricted stock.

MR. LITTLEFIELD: You can remove the restriction if you hold it a certain number of years, two years or else a charity asks for an exemption on the grounds of hardship.

THE COURT: There is nothing in the record on this.

MR. LITTLEFIELD: I am talking about perhaps reaching a stipulation.

THE COURT: Talk to counsel on it and if you think you have anything let me know.

(The following took place in the robing room, 4.45 p.m.)

THE COURT: I would suggest that we call the jury in and I will tell them the best I can on this and ask them what they want to do about going on this evening.

MR. LITTLEFIELD: I take it the problem with the exception stands as to what occurred in the courtroom before?

MR. BERGER: Whatever the proceedings had in the courtroom were were had.

THE COURT: That is right.

MR. LITTLEFIELD: I just wanted to say you indicated during our conference here that what had been said met with approval.

MR. BERGER: I thought the Judge had gone over it in detail and the exception still stands.

THE COURT: All right.

MR. LITTLEFIELD: Also, your Honor, I would ask that the Court consider keeping the jury here tonight and ask them if they want to come in tomorrow. Rather than waiting over the weekend after such a short case.

THE COURT: I don't think I can ask them to do that, it is summertime but I will put it to them and ask them what they want to do.

(In open court.)

THE CLERK: We have another note, your Honor (handing to Court).

THE COURT: Bring them in. They indicate they are having a disagreement here. They indicate they are deadlocked and that is another good reason to bring them in.

(Jury returned to the courtroom at 4.50 p.m.)

THE COURT: Ladies and gentlemen, I have received your note just now indicating that you are deadlocked.

I don't want to know who voted on what side or anything like that but a couple of thoughts I would like to leave with you.

I know you have gotten into a great deal of trouble about this restricted stock and I'm not sure that really is a very basic issue here because the issues in Count 1 is tax evasion, regardless of whether the stock could be sold, did the defendant get an advantage by claiming a tax deduction in 1969 for a gift he didn't make until 1970 and whether the tax saving which as I recall it was

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$8300 some-odd was a substantial tax saving. I instructed you about all that this morning.

In Count 2 the issue was again related to if he had reported in his 1969 return a gift to the Hillel School which he hadn't made until 1970, then his statement in his tax return that he made it in 1969 was false. Those are the issues.

The Government contends that is what happened. The defendant denies it. Those are really the basic issues here.

I am going to ask you to continue your deliberations and I would like to say this to you that it is now Friday afternoon, five minutes of five, if you continue to deliberate this evening how long you want to.

If you should decide you have deliberated enough whether to come back tomorrow or if you decide to come back Monday morning.

I would like you to go back and think about that for a few minutes and let me know which you would like to do, come back tomorrow or come back Monday morning. I will leave it to you.

It is an important case from the Government's point of view and, of course, it is very important from the defendant's point of view. We would like to reach

a decision if at all possible here.

So would you go back and retire and consider this and I will come back down at half-past five and ask you in again at that time and ask you whether you would like to return tomorrow morning, assuming you haven't reached a verdict, whether you would like to continue deliberating tonight or whether you would like to deliberate on Monday. Is that fair enough?

All right. I will excuse you.

(Jury left the courtroom at 5.00 p.m.)

(Jury note marked Court Exhibit 5.)

MR. KATZ: We are going to continue our objections to the Court's charge.

THE COURT: You have an exception and I will be down at 5.30.

6 (The following took place at 5.30 p.m.)

MR. LITTLEFIELD: I don't know what your Honor's practice is as to advising the jury they can report a verdict at any time on any count.

THE COURT: Oh, sure. I will tell them that.

(Jury present.)

THE COURT: Good evening, ladies and gentlemen. As I promised I would call you in to see how you are getting along and, Madam Forelady, have you reached a

verdict on either Count 1 or 2?

THE FORELADY: No, your Honor.

THE COURT: All right. As I indicated to your earlier, you have a choice of whether you want to deliberate this afternoon into the evening or would like to adjourn at a later time, tomorrow or Monday morning. You don't have to come in Saturday if you don't want to, you can come in Monday.

THE FORELADY: We would like ano ther hour, your Honor.

THE COURT: Sure, anything you like. Fair enough. Go and resume your deliberations.

(Jury left the courtroom at 5.35 p.m.)

THE COURT: I guess we will be here another hour.

(The following took place at 6.35 p.m., jury present.)

THE COURT: You had another hour and in that time has the jury reached a verdict or not?

THE FORELADY: We have not reached a verdict and we would like to come back tomorrow.

THE COURT: Comeback tomorrow? All right. If that is what the jury would like to do that is what we will do.

What time would you like tomorrow morning, 10 o'clock?

THE FORELADY: Yes.

THE COURT: There are two things I want you to promise me if you do that.

I want each of you to promise faithfully that you will not discuss this case with anyone at all in the meantime and, No. 2, I want you to promise me that you will not commence deliberating until you are all present in the jury room and participating.

You have seen a convention here and jury deliberation is not a caucus and I don't want you to start deliberating until all 12 are present and participating. You promise that?

All right, on that basis I will excuse you now until 10 o'clock tomorrow morning and kindly report right to the jury room.

Thank you very much and thank you for all you have been doing here.

(Jury left the courtroom.)

THE COURT: All right, see you at 10 o'clock tomorrow.

MR. LITTLEFIELD: May all remain in the courtroom until the jury has long gone?

THE COURT: I would appreciate that, yes.

(Adjourned to Saturday, July 17, 1976, at 10.00 o'clock a.m.)

UNITED STATES OF AMERICA

vs. 76 Cr. 493

JACK LEVINE.

New York, July 17, 1976;
10.00 o'clock a.m.

(Trial resumed.)

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(In the robing room.)

THE COURT: I have had a note from the jury, gentlemen. It starts off:

"1. According to Kolatch's testimony, when did he send the acknowledgment letter to Levine?"

I think there is something in the transcript on that, isn't there?

MR. LITTLEFIELD: Yes, there is.

THE COURT: We can pass that so that we can find it in the transcript.

The next portion of the note is:

"We would like the remainder of the exhibits through No. 15."

We can send those in to them.

Then it says what looks like:

"Reference to Mr. Littlefield's summation. He quoted Mr. Levine's testimony before the grand jury. May we have a reading of this testimony."

I suppose that is in the summation.

MR. LITTLEFIELD: Yes, your Honor. The only part I referred to in the summation was when he said the stock power was attached to the certificate when he gave it.

THE COURT: That is what they apparently want, but you can take that from Levine's testimony. You don't need to take it from the summation.

Would you check on those things?

MR. BERGER: We have daily onthe summations.

THE COURT: I don't think we need the summations, do we?

MR. BERGER: They refer to the summations.

THE COURT: All they want is what Mr. Littlefield quoted from the grand jury testimony and it is in that part of Levine's testimony, so I think we will take it straigh t from the grand jury testimony.

MR. BERGER: I would like to see what he said in his summation. I don't recollect it.

THE COURT: The jury isn't interested in that.

MR. BERGER: I understand.

MR. LITTLEFIELD: Kolach's testimony is on page 148 or 149. Excuse me, your Honor. It is page 148 beginning with line 7 and it goes to the bottom of the next page, your Honor.

THE COURT: Down to line 23.

MR. LITTLEFIELD: Yes, your Honor.

THE COURT: All right.

You might look, gentlemen, and if you see anything else that you think might be appropriate, let me know.

Then we have the exhibits, and then your summation, the quote from Mr. Levine's testimony.

MR. LITTLEFIELD: I'll get that.

It is this portion here, your Honor.

THE COURT: This is the part you say that you quoted in your summation?

MR. LITTLEFIELD: Yes, I told them that Mr. Levine had said that the stock power was signed when he turned the stock over to Mr. Frank.

MR. KATZ: This wasn't on the trial itself.

THE COURT: Yes.

MR. LITTLEFIELD: I read it during the case. I referred to his having said, "Yes, the stock certificate was signed" on my summation.

Your Honor will recall I then went and got these two exhibits Xeroxed, the grand jury exhibits.

THE COURT: This is taken from Levine's testimony?

MR. LITTLEFIELD: Yes, the grand jury testimony that I read to the jury.

THE COURT: You have the grand jury testimony, haven't you?

MR. BERGER: Yes.

THE COURT: All right.

Are we all clear now as to the exhibits?

(Pause.)

THE COURT: Mr. Littlefield, would you give the reporter the testimony.

MR. LITTLEFIELD: Is he going to refer to the exhibits?

Here, your Honor, it says:

"I show you Grand Jury 3-L."

That is Exhibit 19.

THE COURT: Exhibit 19 at the trial?

MR. LITTLEFIELD: Yes.

THE COURT: And Grand Jury 4-L is what at the trial?

MR. LITTLEFIELD: Exhibit 20 at the trial.

the back of this exhibit.

THE COURT: They wanted the exhibits also through No. 15 and we will send them in your exhibit also, Mr. Berger. There is the reference to Mr. Littlefield's summation where he quoted fromthe grand jury testimony of Mr. Levine and we will have the reporter read that.

(In open court.)

THE COURT: Please bring in the jury.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen:

I want to tell you how grateful I am that you were here promptly this morning to ontinue your deliberations. I have received your note here which asks for three items, and I'll read it:

"First. According to Kolatch's testimony, when did he send the acknowledgment letter to Levine?"

I am going to ask the reporter to read Mr. Kolatch's testimony on that, which appears commencing on page 1 48 of the transcript at line 7.

(Record read.)

THE COURT: Does that cover it now?

JUROR NO. 11: It doesn't answer the question when the letter was sent out by the secretary that Kolatch

directed his secretary to prepare.

THE COURT: I think there was other testimony on that. I think he instructed his secretary and he told us, I think, on his testimony that he either would send it out or the secretary would mail it at or about the date on the letter.

JUROR NO. 11: Your Honor, it is very important to us that we know approximately when that letter of acknowledgment was sent out.

THE COURT: Have we got anything else?

MR. LITTLEFIELD: Why don't we proceed with the other matters and we can locate that.

THE COURT: All right.

"We would like to have the remainder of the exhibits through No. 15."

and they will be sent in to you and with that we are going to send the defendant's exhibit.

Then the last point:

"Reference to Mr. Littlefield's summation. He quoted Mr. Levine's testimony before the grand jury. May we have a reading of this testimony."

Again I will ask the reporter if you will kindly read that.

(Record read.)

THE COURT: That I think was the reference to grand jury testimony.

MR. LITTLEFIELD: That was the reference to the summation. There was more grand jury testimony in evidence.

THE COURT: Does that give you what you want?

I will ask them to see if they can find anything more about the actual date of mailing. If there is anything further in the record we'll let you know.

(The jury left the courtroom.)

MR. LITTLEFIELD: Your Honor, I think you made slight slip of the tongue when you said that Kolatch said he sent the letter out close to the date on the letter.

THE COURT: I agree with that.

MR. BERGER: What was that reference? We didn't hear what was stated.

THE COURT: I said something about sending it out close to the date of the letter. Of course it wasn't close to the date of the letter. It was another date. You are quite right. You should have corrected me on it.

MR. LITTLEFIELD: I didn't want to correct you before the jury. We can do it when they come out again.

THE COURT: All right, I will do it later.

MR. LITTLEFIELD: I found some more at page 153, line 3. There is definitely more testimony.

(Pause.)

MR. LITTLEFIELD: Your Honor, it begins at 151 and goes on to 153, line 10 or line 8 of 153. That is also related to the date.

MR. KATZ: Your Honor, the question that the jury asked was what was the date the letter was sent, not when the gift was received. It is prejudicial to read those parts in as to the giving of the gift.

MR. LITTLEFIELD: Except that he sent the letter right after he got the gift.

THE COURT: How far would you go?

MR. LITTLEFIELD: 153, line 7 and I would also like to have part read about the presidents.

THE COURT: Let's have one thing at a time.

MR. BERGER: We will object to all of it.

THE COURT: I understand that.

How far would you go to g et into the presidents?

MR. LITTLEFIELD: I'd go through to 158, line 24.

THE COURT: Line 24?

MR. LITTLEFIELD: "This was not printed at that time."

THE COURT: All right. It would be from 151 to 158; is that right?

MR. LITTLEFIELD: Yes.

MR. BERGER: I would like to make a statement on the record.

THE COURT: I know you object to it. I think it is relevant to the query made by Juror No. 11.

MR. KATZ: Can we make that note an exhibit?

THE COURT: They are all made Court's exhibits. I will make it a Court exhibit as well.

I think this is relevant to the query that has been made, so let's bring in the jury and have the reporter read from page 151, line 11 to page 158, line 21.

MR. BERGER: If your Honor please, may we be permitted to make suggestions also and not just the prosecution?

THE COURT: Sure. What is it?

MR. BERGER: Mr. Rankin has also pointed out that we cross-examined the witness.

THE COURT: Wait a minute. Hold the jury.

Any cross-examination you would like to have

read will be read.

MR. BERGER: Page 183.

THE COURT: All right. You start there.

MR. BERGER: I would like to start at the top of page 183, line 2, and go to the top of page 184, line 2 or, I'm sorry, line 3.

MR. LITTLEFIELD: Go down to line 9. Why not go through 12. Don't you want to go through 12? That goes on the board of directors.

MR. BERGER: All right, through line 12.

THE COURT: It is 183, line 2, I take it?

MR. LITTLEFIELD: It would be 182, line 24. Let's get back to the letter that acknowledged the gift.

THE COURT: Start at 182, line 24.

MR. BERGER: And go to 184, line 12 on Kolatch's cross-examination.

THE COURT: 184, line 12, okay.

Bring the jury in.

(Jury present.)

THE COURT: Ladies and gentlemen, I have been working with the lawyers and there is a little more testimony given by Mr. Kolatch that might help Mr. Davis with the question he raised. I'm going to ask the reporter to read some of Mr. Kolatch 's testimony on

direct examination by Mr. Littlefield and some of it from cross-examination by defendant's counsel.

Would you proceed, Mr. Reporter? Start at 151.

(Record read.)

MR. BERGER: Before the additional reading, that is, the reading of the cross-examination, may we approach the side bar?

THE COURT: Yes.

(At the side bar.)

MR. BERGER: On the cross-examination we start here and we were to go through here, but now with the matter that has been read it goes all the way up to 185 because it refers to just the points that were read in the testimony, already read.

THE COURT: Okay, read it to 185, line 10.

MR. LITTLEFIELD: At the conclusion of this reading will your Honor correct the other mistake?

THE COURT: Yes.

MR. BERGER: Thank you.

(Record read.)

THE COURT: All right, ladies and gentlemen. When you were here before I think I may have misspoken to Mr. Davis when he inquired what Mr. Kolatch

said about when he would send these letters out. As I recall the testimony, he didn't say that. What he did say was that he would date the letter of acknowledgment several days or two days after the date put on the coming-in letter, the gift letter, and that is all he said. I think I misspoke. I might have given the impression that he would mail them out a couple of days after the gift letter. I didn't intend to say that.

All right, ladies and gentlemen, I think that is what we have got.

All right.

(The jury left the courtroom.)

(Court Exhibit 6 was marked.)

xx MR. BERGER: If your Honor please, at this time I wish to be permitted to make a formal statement for the record.

THE COURT: Go ahead.

MR. BERGER: And that is what transpired with regard to the questions on the note and the colloquy between the jurors and the Court referred to the date of a letter sent and that the additional letter of information about the gift and the other testimony here referring to the gift we deem highly prejudicial to the defendant.

THE COURT: All right. You made your motion,

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you made your application. Of course you have an exception.

I think it was an attempt to answer the question that was raised by Juror No. 11. That was the best we could do with the transcript and that was the purpose of it. I was glad to include, of course, part of the cross-examination and part of the direct examination.

MR. BERGER: Thank you.

THE COURT: All right.

(Recess.)

(Not at 11.35 a.m.)

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THE COURT: Mark the note that the jury has reached a verdict as a Court exhibit.

(Court Exhibit was marked.)

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(Jury present.)

(Jury roll taken; all jurors present.)

THE CLERK: Madem Forelady, has the jury reached a verdict?

THE FORELADY: Yes, your Honor.

THE CLERK: How do you find on the first count?

THE FORELADY: The jury finds the defendant guilty.

THE CLERK: On the second count?

THE FORELADY: Guilty.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded:

You say you find the defendant guilty on Counts 1 and 2 and so say all of you.

MR. KATZ: I wish the jury be polled.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded:

You say you find the defendant guilty on Count 1 and guilty on Count 2.

(In answer to the question "Is that your verdict?" all jurors answered in the affirmative.)

THE COURT: Ladies and gentlemen, all that is left for me to do is thank you. I never comment on a jury verdict because to me it is a very sacred thing, because it represents the conscientious convictions of twelve representative citizens, so I don't comment on a jury verdict. I don't think anybody has any right to comment on a jury verdict. But I do want to thank you.

I told you something in my charge yesterday about circumstantial evidence. There was a lot of circumstantial evidence in this case, who the head master, when these things might have been. I think you've done an admirable job. We wanted and all of you wanted to be very sure and that is a great tribute to the jury

* * *

Service of ONE COPY of the within APPENDIX is hereby admitted this 7th day of Oct. 1976

Signed L B Pedowitz (by [illegible])

Attorney for APPELLEE